



Unfair Competition

Whether based on the federal trademark statutes or the California Business and Professions Code, the Intellectual Property department at Ropers has the in-depth knowledge of unfair competition claims that only comes from years of litigating and trying such cases. Our experience includes the defense of medical device manufacturers, Internet retailers, nutritional supplement companies and service providers. Since many of these cases are driven by the lure of recovering attorneys fees, we have found that a detailed front-end analysis of the up and down sides of these cases will allow our clients to make cost-effective decisions as to the course of litigation.

Representative Experience

Attorneys: J. Mark Thacker

Key Issues: Trade Secret; Trade Dress; Unfair Competition

Venue: USDC: Northern District of California

Client Type: Defendant Product Manufacturer

Description: Defended a product manufacturer in a suit for trademark infringement, misappropriation of trade secret and unfair competition arising out of manufacture and sale of ceiling systems.

Result: The matter was settled for a minimal amount, to the complete satisfaction of the client.

Attorneys: John A. Koepfel

Key Issues: LSAT; Copyright

Venue: Los Angeles County Superior Court

Client Type: Defendant Test Preparation Company

Description: Defended our client in a case involving a copyright and defamation action between two test preparation companies which provided instructional services for the Law School Admissions Test ("LSAT"). The plaintiff accused the defendants, former employees who started a competing company, of copying its course materials and defaming the defendant on internet discussion boards using pseudonyms to disguise their identities. Summary judgment was granted in favor of defendants on the plaintiff's unfair competition claim that the defendants helped students cheat on the LSAT. The plaintiff expended more than \$8 million in fees and costs

to litigate the case.

Result: The plaintiff demanded \$5 Million and a permanent injunction that would force the defendants out of business. The plaintiff rejected a large settlement offer and after a 25 day trial, the jury denied the plaintiff's request for \$18.5 Million and instead awarded \$256,000. The plaintiff's claims for trade libel and intentional interference with prospective economic advantage were dismissed on non-suit and directed verdict. The court denied the plaintiff's request for a permanent injunction and stated that the course materials separately developed by defendants added significant originality to the to the test prep industry. Two articles about the trial were published in IP Law 360. A number of pre-trial issues are on appeal.

Attorneys: Stephen J. Erigero

Key Issues: Copyright Infringement; Unfair Competition

Venue: USDC: Central District of California

Client Type: Defendant Toy Importer

Description: Represented a toy importer in a case involving allegations of copyright infringement and unfair competition over an advertisement. Obtained the dismissal of right of publicity claims brought by individuals who appeared in the advertisement based upon the principle of copyright preemption of right of publicity claims.

Result: The case was resolved by settlement.

Attorneys: David M. McLaughlin

Key Issues: Product Liability; Breach of Warranty; Breach of Contract; Unfair Competition

Venue: Santa Clara County Superior Court

Client Type: Defendant Manufactured Homes Dealer

Description: Represented a manufactured homes dealer in 30+ cases involving claims for product liability, breach of warranty, breach of contract and unfair competition.

Result: The two cases led to a jury verdict and judgments in favor of the client. After the court awarded the client attorney fees in both cases, and the judgments were pursued, the plaintiffs filed bankruptcy and the serial litigation against the client ceased.