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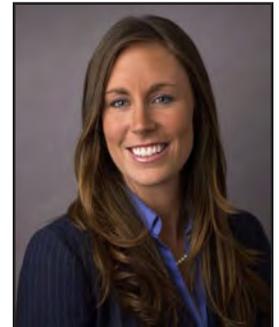
PENNSYLVANIA

TRADEMARK INFRINGEMENT



John C. McMeekin II

Following a recent hearing before U.S. District Court Judge Joel H. Slomsky, John C. McMeekin II and Meredith Mack received a favorable judgment in a trademark infringement case on behalf of their clients, Coach, Inc. and Coach Services, Inc., in the amount of \$947,194. At the hearing, Coach contended that the defendants, a pocketbook, accessory, and beauty supply store and store owner individually,



Meredith A. Mack

knowingly and willfully violated and infringed upon the world famous Coach brand trademarks and copyrights by selling and offering for sale counterfeit Coach merchandise. The evidence showed that the defendants were selling large quantities of designer marked counterfeit handbags, wallets, hats, scarves, and other accessories. The owner stated that the store had regular and repeat customers who purchased large quantities of counterfeit goods to resell them at their places of business and/or house parties. In April of 2011, two (2) special agents from United States Immigration and Customs Enforcement ("ICE") raided the defendants' store, at which time defendants surrendered their inventory of illegal counterfeit merchandise. An analysis of the counterfeit Coach goods demonstrated that the defendants had infringed upon ten (10) Coach trademarks and one (1) Coach copyright.

In its Complaint, Coach asserted: (I) trademark counterfeiting in violation of *Section 32* of the Lanham Act (*15 U.S.C. § 1114*); (II) trademark infringement in violation of *Section 32* of the Lanham Act (*15 U.S.C. § 1114*); (III) trade dress infringement in violation of *Section 43(a)* of the Lanham Act (*15 U.S.C. § 1125(a)*); (IV) false designation of origin in violation of *Section 43(a)* of the Lanham Act (*15 U.S.C. § 1125(a)*); (V) trademark dilution in violation of *Section 43(c)* of the Lanham Act (*15 U.S.C. § 1125(c)*); and (VI) copyright infringement in violation of the United States Copyright Act (*17 U.S.C. § 501*). The court found that the defendants committed willful violations of both the Lanham Act and the United States Copyright Act and awarded statutory damages to Coach in the amount of \$947,194, in addition to attorneys' fees and costs.

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The defendants' sale of counterfeit Coach goods damaged Coach, its business, and its well-deserved reputation for high quality apparel and merchandise, and intentionally misled customers to purchase cheap, low-quality imitation, counterfeit Coach products. Coach products are among the most popular luxury brand items in the world. Coach has expended substantial resources in developing, advertising, and otherwise promoting the Coach trademarks. As a result, products bearing the Coach trademarks are widely recognized and exclusively associated by consumers, the public, and the trade as being high quality products manufactured by Coach.

In October 2008, Congress passed the Prioritizing Resources and Organization for Intellectual Property Act (PRO-IP Act) to strengthen the government's ability to protect the property rights of U.S. industries and intellectual property rights holders. In the PRO-IP Act, Congress noted that U.S. industries with intellectual property rights represent a major source of creativity, innovation, economic growth and competitiveness. In April 2010, the Government Accounting Office, or GAO, reported to the House and Senate Judiciary Committees that the impact of counterfeit and pirated goods on the economy and industries of the United States was systemic and widespread, having adverse effects on companies like Coach which maintain intellectual property rights, as well as on the American economy.

In addition to causing severe harm to owners of intellectual property rights, counterfeiting diminishes innovation, impedes domestic job creation and growth, and often results in the loss of substantial tax revenue. The practice of manufacturing and selling counterfeit goods and technologies has strong ties to unlawful child labor, creates health and safety issues both in the workplace and for consumers, and is linked to organized criminal enterprises. U.S. authorities have also linked the sale of counterfeit goods and the revenues generated by same to funding international terrorist organizations.

This award marks a significant step in Rawle & Henderson's representation of Coach in its ongoing and aggressive battle against long and historic practices of illegal counterfeiting. The enforcement and protection of the rights of consumers and intellectual property rights holders requires the active and concerted cooperation of companies, such as Coach, their attorneys, and law enforcement agencies to identify and terminate the sale of counterfeit merchandise. Coach and its counsel continue to partner with local, state, and federal authorities to identify and prosecute violations of the Lanham Act, the Copyright Act, and similar state laws prohibiting the sale of counterfeit merchandise.

Coach, Inc. et al v. Veronica's Pocket Book and Beauty Supply et al, U.S.D.C., Eastern District of Pennsylvania, No. 2:2011-cv-05195-JHS

John C. McMeekin II is a partner in the Philadelphia office. He represents clients as national trial counsel in environmental, toxic and mass torts product and related class actions. He graduated *magna cum laude* from the University of Baltimore School of Law. John is admitted to practice in Pennsylvania, New Jersey and Maryland and related U.S. District Courts. He is a former Chair of the ABA TIPS Toxic Tort & Environmental Law Committee, Chair of the Philadelphia Bar Association Environmental and Toxic Tort Law Committee and Vice Chair of the ABA TIPS International Law Committee.

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Meredith A. Mack is an associate in the Philadelphia office. She concentrates her practice in the area of environmental, mass and toxic torts. Ms. Mack graduated from Yale University in 2005 with a Bachelor of Arts degree with distinction and was a member of the women's varsity lacrosse team for four years. She earned a J.D. from Wake Forest University School of Law in 2008 where she served as Vice President of the Student Bar Association, acted as the teaching assistant for Wake Forest's Pre-trial Practice and Procedure Program and helped establish the Youth Advocacy Group. She is admitted to practice in Pennsylvania and New Jersey as well as before the U.S. District for the Eastern District of Pennsylvania.

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PENNSYLVANIA BANKRUPTCY



Gary F. Seitz

Gary F. Seitz, partner, received a favorable judgment on behalf of a client, V&R Sheet Metal, after a two-day bench trial of a bankruptcy preference case brought by the debtors. In a straightforward 13-page decision, signed July 13, 2012, Judge Jeffery A. Deller

of the Western District of Pennsylvania Bankruptcy Court dismissed the Chapter 11 debtors' preference Complaint seeking recovery of more than \$700,000 on the grounds that the plaintiffs failed to establish an element of their *prima facie* case at trial.

The court affirmed that the burden of proving all five elements of the preferential transfer case falls upon the debtors. Here, the debtors were unable to establish that the creditor received more than it would have received if the case were in a Chapter 7. No evidence was presented regarding the debtors' financial condition, the assets of the debtors, the amounts available for distribution to creditors (either including or without the transfers in question) or any other aspect of the debtors' bankruptcy. Rather, at the trial, the debtors asked the court to take judicial notice of 18 documents in the bankruptcy court's records and facts contained therein to establish that V&R Sheet Metal received more as a result of the transfers than it would have if the Debtors were in Chapter 7 and V&R had not received the transfers.

The court acknowledged that bankruptcy courts are reluctant to use judicial notice as a complete substitute for the presentation of evidence of an element of a

preference claim. The court upheld the objections to its use and found that judicial notice of the numerous documents and facts is not appropriate in this instance. Accordingly, the debtors failed to prove that V&R Sheet Metal received more than it would have under a hypothetical Chapter 7 liquidation and the court dismissed the complaint.

For trade creditors, preference claims filed by debtors or trustees in bankruptcy represent the final harm in a series of damage flowing from a customer's financial demise. First, vendors lose a customer to bankruptcy. Second, they will likely be out any sums due and owing at the time the bankruptcy is filed. Then, they must defend against a lawsuit that aims to claw back any payments the insolvent company may have made just prior to the bankruptcy filing. This last harm is all the more troubling because of the delayed launch and protracted nature of most preference law suits. Preference claims are usually launched two years after the initial bankruptcy is filed, just before the preference claim statute of limitation expires—often taking the trade creditor by surprise.

Small companies often feel the pain more than big companies. Once the claim is launched, a vendor can be tied up in court or mediation for years. For instance, the preference claims were filed against V&R Sheet Metal in 2010, in debtors' bankruptcy cases which were commenced in 2008, for payments that dated as far back as 2007. The court's decision was recently released.

Preference lawsuits are a constant source of anguish in the creditor community. But there is nothing more gratifying than winning a preference lawsuit

and depriving a debtor-in-possession of any recovery on the claim. Judge Deller's decision is an important reminder for trade creditors that these claw-back cases are defensible based on attacks on the *prima facie* case as well as the statutory affirmative defenses.

W. P. Hickman Systems, Inc. v. V & R Sheet Metal LLC, U.S. Bankruptcy Court, Western District of Pennsylvania, Adv. No. 10-2289-JAD

Gary F. Seitz is a partner in the Firm's Philadelphia office. He concentrates his practice in the areas of commercial bankruptcy, commercial litigation and admiralty and maritime law. He has extensive experience handling bankruptcy matters for creditors, asset purchasers and trustees. Gary is admitted to practice in Delaware, Pennsylvania and New Jersey.

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ABA/TIPS



Nigel A. Greene

Nigel A. Greene, a partner in the Philadelphia office, has been appointed Vice-Chair of the ABA Tort Trial and Insurance Practice Section (TIPS) Commercial Transportation Litigation General Committee for the 2012-2013 fiscal year. Nigel's term will continue through August 13, 2013. His appointment is in recognition of his professional abilities and reputation among 25,000 TIPS members. Mr. Greene focuses his practice on the defense of commercial motor vehicles, complex commercial litigation and casualty and premises liability matters. In addition, Nigel serves as an arbitrator in Philadelphia County. He is admitted to practice in the state courts of Pennsylvania, the U.S. District Courts for the Eastern and Middle Districts of Pennsylvania and the U.S. Court of Appeals for the Third Circuit.

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Valerie Kellner

Valerie Kellner, a partner in the Philadelphia office, has been appointed to the CLE Board of the American Bar Association's Tort Trial & Insurance Practice Section (TIPS), as well as the Long Range Planning Committee. She previously served as the Chairperson for the Products Liability Committee for the ABA/TIPS. Valerie is a partner in the Firm's Philadelphia office. She focuses her practice on product liability and general litigation. She is admitted to practice in federal courts and the state courts of Pennsylvania and New Jersey. She received her undergraduate and law degrees from Rutgers University. Valerie is active in the ABA/TIPS (Tort Trial & Insurance Practice Section).

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