

Banner & Witcoff successfully defends client C&F Enterprises' free speech rights in trademark litigation

Banner & Witcoff successfully defended firm client C&F Enterprises' free speech rights in a trademark litigation against OBA Canvas Co. regarding OBA's mark A MERMAID SLEEPS HERE in the U.S. District Court for the Eastern District of Virginia.

OBA asserted that C&F Enterprises' use of the phrase "Mermaid Sleeps Here" on the face of a decorative pillow was an infringement of OBA's rights in the trademark A MERMAID SLEEPS HERE for Pillows. In the wake of the Supreme Court's decision in *Matal v. Tam* (aka, The Slants case), one area of tension that remains between trademark rights and free speech is the doctrine of aesthetic functionality, where a mark is used not as a trademark, but rather is used aesthetically or artistically on another article. Banner & Witcoff successfully argued that C&F Enterprises' use of the phrase was decorative in nature, and not a trademark use to indicate the source or origin of the goods in question, and as a result achieved a successful settlement that allows C&F Enterprises to continue with business as usual.

Banner & Witcoff attorneys Ross A. Dannenberg, Christopher B. Roth and R. Gregory Israelsen handled the case.

The case was *C&F Enterprises v. OBA Canvas Co. et al.*, E.D.Va, No. 1:17-cv-00512.

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