

Banner & Witcoff Wins Dismissal of False Marking Claim for Lexmark

December 21, 2011

Banner & Witcoff is pleased to announce that, on December 21, 2011, the United States District Court for the Middle District of Florida granted Lexmark International, Inc.'s ("Lexmark") motion to dismiss a claim for false patent marking brought by Advanced Cartridge Technologies, LLC ("ACT").

As a *qui tam* relator, ACT sued Lexmark on February 22, 2010 for alleged false patent marking. In its ruling, the Court explained that the Leahy-Smith America Invents Act, which repealed the False Marking Statute's *qui tam* privilege and limited recovery for false marking to a plaintiff suffering a "competitive injury," eliminated ACT's *qui tam* action and left in doubt ACT's standing to pursue a false marking claim.

The Court held that ACT's false marking claim suffered dismissal for straightforward reasons. First, ACT failed to allege an injury-in-fact and therefore failed to meet the "irreducible minimum" of Article III standing. The Court reasoned that ACT sued Lexmark promptly after *qui tam* liability expanded and yet was unable to provide "a single fact to suggest that ACT operated as more than an *ad hoc* corporate vehicle for prosecuting this action" and further stated that "[s]light or severe; past, present, or future; no injury is to be found." Second, the Court stated that, even if ACT had suffered an alleged injury, it was too remote for ACT to maintain prudential standing to assert the claim. The Court further explained that it was palpable from ACT's silence that it was "a shell which competed with neither Lexmark nor anyone else." Consequently, the Court dismissed ACT's claim for false marking.

Lexmark was represented by Banner & Witcoff, Ltd.'s Chicago-based attorneys Timothy C. Meece, V. Bryan Medlock, Jr., and Audra Eidem Heinze, and also by DC-based attorneys Robert F. Altherr, Jr. and Christopher B. Roth. The case is *Advanced Cartridge Technologies, LLC v. Lexmark International, Inc.*, docket no. 10-cv-00486, in the United States District Court for the Middle District of Florida.

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