

Banner & Witcoff wins early dismissal of patent infringement and false advertising claims for Volvo Car USA and its co-defendants

On December 13, 2016, Banner & Witcoff won dismissal of all patent infringement and false advertising claims against its clients, Volvo Car USA, LLC, Grey Global Group, Inc., The Big Picture Company, 1st Avenue Machine USA, Inc., SCPS Unlimited, LLC, and Mr. Bob Partington. The case, *Cannarella v. Volvo Car USA LLC et al.*, No. 2:16-cv-06195 (Northern District of California), included allegations that the defendants' manufacture and use of a clean energy generation device allegedly infringed U.S. Patent Number 8,232,661, entitled "System and Method for Generating and Storing Clean Energy." The case also included allegations that a Volvo Car USA LLC commercial depicting the accused clean energy generation device constituted false advertising.

In granting the motion to dismiss the patent infringement claims, the Court agreed with Banner & Witcoff's arguments that the plaintiff's complaint "fails to state a claim for relief under the heightened Twombly/Iqbal pleading standards." In particular, with respect to alleged direct infringement, the Court agreed that the plaintiff's infringement allegations failed to show how the accused product "embodies or practices each and every element of any of the asserted claims." With respect to alleged indirect infringement, the Court agreed that the plaintiff failed to allege facts showing, among other things: (1) that defendants had actual knowledge of the asserted patent; (2) where and how the defendants sold a material part or component of a patented machine or what, if any, material or apparatus was used; and (3) that the accused product lacks any substantial non-infringing uses.

In granting the motion to dismiss the false advertising claims, the Court agreed with Banner & Witcoff's arguments that the plaintiff's false advertising claims were fatally flawed and should be dismissed with prejudice. In particular, the Court agreed that the plaintiff did not and could not allege facts showing, among other things: (1) that any allegedly false statements actually deceived, or had the tendency to deceive, a substantial segment of Volvo's audience; (2) an injury to a commercial interest associated with a direct diversion of sales from the plaintiff to defendants or a

lessening of the goodwill associated with the plaintiff's products; and (3) a plausible causal connection between any harm that the plaintiff suffered and defendants' allegedly false statements.

Please click [here](#) to view the full opinion and order granting the motion to dismiss.

Volvo Car USA, LLC, Grey Global Group, Inc., The Big Picture Company, 1st Avenue Machine USA, Inc., SCPS Unlimited, LLC, and Mr. Bob Partington are represented by Banner & Witcoff's Chicago-based attorney Jason S. Shull.

Please click [here](#) to read a Law360 article on the case.



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