

Product Distributor v. Product Distributor (United States District Court, Southern District of New York)

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Margot Wilensky

Margot Wilensky obtained summary judgment on all causes of action in a case where the plaintiff, a legwear distributor, alleged (1) tortious interference with contract; (2) interference with prospective economic advantage; (3) misrepresentation and false advertising; and (4) unfair competition. This action was premised on plaintiff's allegation that a prior, albeit non-exclusive, verbal contract was entered into between plaintiff and a foreign manufacturer to sell Italian legwear in the United States. Plaintiff failed to make any substantial sales and failed to pursue discussion of becoming the exclusive distributor, which testimony established required a significant volume of sales in the U.S. Nevertheless, plaintiff claimed that a sales employee, who had been terminated from the foreign manufacturing company in Italy, had told plaintiff that the plaintiff would be the exclusive product distributor. Deposition testimony of this former employee in Italy - plaintiff's self-proclaimed "star witness" - confirmed that he was not an officer or director of the company, and thus had no authority to bind the company. Deposition testimony also confirmed that plaintiff had not made a volume of sales, no orders for legwear were actually placed by buyers at retail stores, and it was the manufacturer's prerogative to select a different distributor. We successfully established that our client, a well-known U.S. distributor of legwear, entered into a written, exclusive contract with the manufacturer months after the trial period with plaintiff had come to an end, and that our client did not know of this prior relationship between plaintiff and the manufacturer. With the use of expert reports from an economist and retail expert, we successfully rebutted plaintiff's claims of lost profits and interference with business relationships.