



15-SECOND ADVERTISING LAW ALERT

MARRIAGES MAY BE MADE IN HEAVEN, BUT PUFFERY IS MADE IN COURT

Statutory and common law prohibit false advertising claims, but judge-made law creates a *caveat emptor* exception for puffery. A recent decision addresses a familiar claim the context of which usually determines whether it is held to be actionable or puffery.¹

BACKGROUND

Plaintiffs produced the “Bridal Extravaganza Show” for about 25 years in Houston. It is one of the largest of its type, attracting hundreds of exhibitors (gowns, etc.) and thousands of prospective brides.

Houston Wedding Showcase, one of the Defendants, created a similar show and scheduled its first opening for the same convention center two weeks after Plaintiffs’ show.

Prior to the opening of Plaintiff’s show, Defendants advertised their scheduled (but never seen before) show as being “Houston’s #1 Bridal Show.”

Plaintiff moved for a preliminary injunction on the ground that the “Houston’s #1 Bridal Show” claim was literally false when considered “by any number of factors.” Defendants asserted it was puffery.

DECISION

The injunction was denied because the court could not conclude that the Plaintiffs likely would succeed on the merits. “Houston’s #1 Bridal Show” was deemed to be non-actionable puffery, because it was “too ambiguous to be actionable.”

The court found that “it is not clear with respect to what metric Defendants claim to be number one, forcing the Court to conclude that this statement is not empirically verifiable.” On that basis, the court found that the claim could not be considered literally false.

The claim also was found to be a bald or general assertion of superiority, which a number of courts have considered to be puffery.



¹ *Bridal Expo, Inc. v. Van Florestian*, CA No. 4:08-cv-03777 (S.D. Tex. Feb. 2, 2009).

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