



15-SECOND ADVERTISING LAW ALERT

THE QUEST FOR THE “HOLELY” FALSE ADVERTISING COMPLAINT

Courts may, you know, throw out Lanham Act false advertising complaints due to their failure to meet the heightened pleading standards for alleging fraud and mistake under Federal Rule of Procedure 9(b). We are reminded of this by a recent decision*

BACKGROUND

MapQuest filed charges against CIVIX-DDI relating to the latter's license and patents for geographical search technology. The parties had been litigating elsewhere over these rights for more than five years.

CIVIX filed four counterclaims, one alleging that MapQuest engaged in false advertising in violation of Section 43(a) of the Lanham Act.

CIVIX alleged that MapQuest “improperly represented to infringers [of CIVIX patents] that by buying products sold by MapQuest they are licensed under the CIVIX patents.” This allegedly encouraged infringers not pay for a CIVIX licenses.

MapQuest moved to dismiss all counterclaims for failure to state an actionable claim. As to the false advertising claim, among other things, MapQuest asserted that it failed to satisfy Rule 9(b). That rule requires, in relevant part: “In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.”

DECISION

The court dismissed the false advertising claim for failure to satisfy Rule 9(b). It found that CIVIX's “thin” allegations “say nothing about the content, form, location, or method of communication of the alleged false statements.” This was “more startling” due to the litigation history. The complaint also failed to show the alleged representations to be “commercial advertising or promotion,” a necessary element.

CIVIX's argument that discovery might unearth more details was rejected: Rule 9(b) was created “to eliminate the filing of conclusory complaints as a pretext for detecting additional wrongs.” (Quoting) ■

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* *MapQuest, Inc. v. CIVIX-DDI*, No. 08-C-1732 (N.D. Ill. Feb. 11, 2009).