



## 15-SECOND ADVERTISING LAW ALERT

# COURT REFUSES TO SUPPRESS SUPPRESSOR CLAIM

To obtain a preliminary injunction against an advertisement, a plaintiff usually needs to make strong showings that it likely will succeed on the merits of the suit and that the balance of hardships in granting or denying the injunction favors the plaintiff. A recent case illustrates this well.\*

### BACKGROUND

Both parties sell suppressors (a/k/a “silencers”) for firearms. Defendant ran an ad showing cut-away views of its suppressor and an unnamed “Competitor’s Brand.”

The ad said that Defendant’s product had a “Fully-Welded Core,” while the competitor’s product had a “Spot-Welded Core.” The ad stressed that full welding provided “maximum strength and durability,” while “spot welds can fatigue, crack, and break ....”

Plaintiff sued under Section 43(a) of the Lanham Act and moved for a preliminary injunction. It claimed that the depiction of the competitor’s

brand was identifiable as its product and that it did not use spot welds.

Plaintiff argued that, by depicting its product, the ad was a literally false express comparative ad for which injury is presumed. It also alleged that the ad misleadingly implied that the competitive product was less durable under ordinary use.

Defendant countered that the depiction was similar to other products and that the ad did not say that spot-welded products were less durable; it just said that they have the potential to break.

### DECISION

The court denied the preliminary injunction motion, finding Plaintiff had not made a strong enough showing of likelihood of success on the merits. The primary key was failure to show convincingly that the ad’s audience would infer that Plaintiff’s suppressor was the “competitive brand.” Thus, the court also found that Plaintiff failed to show literal falsity, deception, or that the ad caused Plaintiff injury.■

**Richard J. Leighton: 202-434-4220**  
**Leighton@khlaw.com**

\* *Surefire, LLC v. Advanced Armament Corp.*, No. SA CV-08-1405 DOC (C.D. Cal., April 13, 2009).