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## BLOGS

### Tortious Interference

# Court Rules That Competitor Privilege Defense Trumps Tortious Interference Claim

In *Utility Trailer Sales of Kansas City, Inc. v. MAC Trailer Mfg., Inc., et al.*, 2010 LEXIS 83142 (D. Ka. Aug. 16, 2010), a Kansas federal court held that the “wrongful means” element needed to defeat the competitor privilege on a tortious interference claim is a higher standard than “malice.” The case arose out of a 2000 dealer agreement that granted Utility Trailer (UT) a nonexclusive license to sell trailers manufactured by MAC Trailer Manufacturing. Within a specified territory, however, UT was to be the sole authorized dealer. Importantly, the dealer agreement did not restrict MAC or any MAC dealer outside of UT’s territory from selling MAC products in the territory. MAC attempted to terminate the dealership agreement in April 2008 and again in 2009. In 2008, Summit, a competitor of UT located outside the territory, began selling MAC trailers within the territory. UT sued MAC and Summit in 2008 alleging, among other things, tortious interference with a prospective business expectancy or relationship. The jury returned a verdict in UT’s favor on the claim of tortious interference with a competitive business advantage. MAC and Summit argued that judgment as a matter of law should be entered because there was no evidence of malice and they were protected by the “competitor privilege.”

The court granted the motion and determined that, while the evidence did not clearly indicate that MAC’s behavior was not malicious, UT failed to produce sufficient evidence that MAC’s and Summit’s actions were not protected under the competitor privilege. The court noted that under the competitor privilege a plaintiff cannot be held liable for tortious interference with a prospective business relationship if: (a) the relationship concerns a matter involved in the competition between the actor and the plaintiff; (b) the actor does not employ wrongful means; (c) its action does not create or continue an unlawful restraint of trade; and (d) its purpose is at least in part to advance its interest in competing with the plaintiff. The court focused on the “wrongful means” element of the competitor privilege test and determined that the standard for establishing wrongful means requires a showing that the defendant acted with “independently actionable conduct,” a more difficult standard to meet than malice. Because the acts alleged by UT did not constitute independently actionable conduct, there was no legally sufficient basis on which the jury could have concluded that the competitor privilege did not apply.