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BLOGS

False Advertising

Texas Court Partially Grants Mattress Retailer's Motion for Summary Judgment on Claims Brought by Manufacturers

The U.S. District Court for the Southern District of Texas granted in part and denied in part a defendant retailer's motion for partial summary judgment on several Lanham Act and false advertising claims brought by its former manufacturers. *Tempur-Pedic N. Am., LLC v. Mattress Firm, Inc.*, 2018 WL 3483082 (S.D. Tex. July 19, 2018). After nearly twenty years of working together, the plaintiffs (collectively, "Tempur-Sealy") and Mattress Firm entered into a letter agreement in which the parties agreed to continue their relationship through a specified date. When Mattress Firm used Tempur-Sealy's intellectual property beyond the specified date and began selling mattresses purchased from competing manufacturers, Tempur-Sealy filed suit alleging breach of contract, trademark infringement, and false advertising. Mattress Firm moved for partial summary judgment on all of Tempur-Sealy's extra-contractual claims.

The court denied summary judgment on the trademark infringement claims, finding that Mattress Firm had failed to demonstrate the absence of genuine issues of material fact as to whether the alleged trademark misuses continued to occur, or would occur in the future. The court granted summary judgment on a false advertising claim concerning a YouTube video comparing mattress prices, because Tempur-Sealy did not produce any evidence showing that the statements in the video were literally false, rather than ambiguous or true but misleading. Because Tempur-Sealy also failed to present any evidence of actual consumer deception, the claim for false advertising based on the video was deficient as a matter of law. However, with respect to an in-store ad campaign, the court found the evidence sufficient to create a genuine issue of material fact as to literal falsity, as there was some evidence that the ad misstated prices of the competing mattresses. Accordingly, the court denied the motion for summary judgment insofar as the claim concerned the in-store displays.

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