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Insurance Coverage ALERT

Federal Court Holds That Intentional Acts Exclusion Does Not Vitiate a Defense Obligation Under New York Law Where Intent is Not an Element of the Claim

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A manufacturing company and two of its officers brought a declaratory judgment action against their insurer. The company sought the court's declaration that the insurer was required to reimburse it for costs and expenses that it incurred in defending two underlying trade dress lawsuits. It was alleged in the underlying complaints that during the time that the company manufactured and assembled the underlying plaintiff's lighting products (pursuant to a confidentiality agreement), the manufacturer accessed and used the underlying plaintiff's confidential information and designs to develop and market its own allegedly identical lighting products. The underlying plaintiff filed the underlying actions against the manufacturer, asserting a number of claims, including violations of Section 43(a) of the Lanham Act, trade dress infringement, trade dress dilution and unfair competition. In the complaints, the underlying plaintiff repeatedly alleged that the insured manufacturer's conduct was "intentional, willful, wanton, malicious, oppressive, and reckless." In every count, the underlying plaintiff reasserted each factual allegation previously set forth in its complaint.

The insurer refused to defend the manufacturer on the grounds that neither complaint alleged "advertising injury" and the "knowing violation of rights" exclusion applied to bar coverage. The manufacturer filed a complaint for declaratory judgment. The U.S. District Court for the Southern District of New York held that the insurance company breached its duty to defend. After determining that the allegations in the underlying lawsuits constituted "advertising injury" under the insurance policy, the court addressed the issue of whether coverage for the underlying lawsuits was excluded pursuant to the "knowing violation of rights" exclusion. The insurer argued that the "knowing violation of rights" exclusion applied to each count of the complaint, including the trade dress claims, because the underlying lawsuits specifically asserted that the manufacturer "knowingly, intentionally and willfully breached the confidentiality agreement with the intent to infringe [the underlying plaintiff]'s trade dress, purloin [its] trade secrets and propriety information, compete with [it], and steal its customers and business." According to the insurance company, the allegations in both underlying complaints made clear that "knowing and intentional conduct pervade and underscore the entire claim."

The court determined that the allegations of intent in the complaint did not foreclose the possibility that the manufacturer could have been liable to the underlying plaintiff "without a finding that [the manufacturer] knew that its conduct would violate [the underlying plaintiff]'s rights and inflict the

advertising injury at issue." The court held that the insurer was obligated to defend the manufacturer because the underlying complaints asserted claims for which it could have been found liable without a showing of intentional, knowing conduct.

Practice Note

New York is among the majority of jurisdictions that hold that an insurer cannot deny its obligation to defend its insured pursuant to an intentional acts exclusion, even if an underlying complaint alleges that an insured knew that he or she was committing a wrongful act, if the insured could still be found liable without a showing of intentional conduct. As a result, in New York, whenever the underlying complaint alleges a claim that does not require a showing of intent as an element of the claim, an insurer either must either look to reasons other than the intentional acts exclusion as a basis to deny the defense obligation or defend under a reservation of rights.

Bridge Metal Industries, L.L.C. v. Travelers Indem. Co., 812 F. Supp. 2d 527 (S.D.N.Y. 2011)
