**Patent False Marking Claims Prove Largely To Be a Nuisance**

A large number of false marking cases have been filed in recent years. According to the article, approximately 830 false marking suits have been filed since January 2009, with a large number of them (i.e., some 60 percent of the cases) being filed in the Eastern District of Texas. The result of the doleful efforts of Section 292 claimants is to be marked with a U.S. patent number even though the patent has expired or (2) the article is not covered by any patent at all. A penalty can be assessed against each article where the marking is false. According to the article, there are two scenarios: (1) an article continues to be marked with a U.S. patent number and yet a Section 292 claim is brought; or (2) do nothing and risk a Section 292 claim.

Recently published data regarding settlements of false marking claims show some light on the actual cost of settling such claims. According to one source, there have been approximately 191 settlements for falsely marking goods as being covered by a patent and worth $50,000 or less. The total sum for all 191 settlements was $55,635. The largest group is between $25,001-$50,000, with 30 settlements while the next largest is between $50,001-$75,000 with 21 settlements. The largest settlement is $1,873,000, which was awarded in Forest Group, Inc. v. Bon Tool Co., 590 F.3d 1295 (Fed. Cir. December 28, 2009), the largest settlement under Sections 292 of the Patent Statute; or (3) do nothing and risk a Section 292 claim. The chart below illustrates that approximately 86 percent of the claims settle for $75,000 or less. The largest number of claims settled at between $25,001-$50,000, with 52 settlements, and the next largest group being those settlements between $50,001-$75,000 with 30 settlements.

While the settlements may vary as to the result of the opposing parties or the relative difficulty of proving the requisite elements in each case, this data suggests that Sections 292 claims largely are being settled at nuisance costs, i.e., costs that are less than the cost of defending the lawsuits. One implication from this conclusion is that the companies involved in such lawsuits are covering the costs they mark, they should carefully weigh the cost of undertaking an expensive and time-consuming effort to prove the defendant product is not caught up with the patent as well as the cost of settling such cases. For companies that have learned they have products that are not covered by valid patents or that are inaccurately marked with patents, such settlements may be reduced to a sum as low as $150,000.

A recent study conducted by JMBM’s Gregory Cordrey, a partner in the Litigation Department of JMBM’s Orange County office, focuses on the mark false marking cases have been filed in recent years. According to the article, there has been approximately 830 false marking suits have been filed since January 2009, with a large number of them (i.e., some 60 percent of the cases) being filed in the Eastern District of Texas. As a result of the doleful efforts of Section 292 claimants is to be marked with a U.S. patent number even though the patent has expired or (2) the article is not covered by any patent at all. A penalty can be assessed against each article where the marking is false. According to the article, there are two scenarios: (1) an article continues to be marked with a U.S. patent number and yet a Section 292 claim is brought; or (2) do nothing and risk a Section 292 claim.

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Buyer Beware: When you buy a hotel, don’t buy an ADA lawsuit or Department of Justice investigation

M any investors view our current economic environment as a golden opportunity to purchase distressed and net-leased assets at substantial discounts. Before any of these investors take any reasonable steps to pursue such opportunities, however, they should add one more item to their due diligence checklist: the hotel’s physical property and operating accommodations, as required by the Americans with Disabilities Act (ADA), and parallel state laws such as the California Accessibility Standards for New Construction and Accessible Redevelopment (CASp). The current legal landscape of ADA enforcement

The current legal landscape has created a new reality for investors. It is very possible, when purchasing a hotel or motel, to buy itself an ADA lawsuit.

DOJ investigations

In addition to private plaintiff lawsuits, the United States Department of Justice (DOJ) also actively seeks to enforce the ADA against all business owners and operators, including hotels and motels. In fact, the DOJ has initiated a number of system-wide investigations from several years ago. This landscape has created a scenario where the owner or operator may be found in violation without any notice and have to perform a comprehensive ADA investigation of 60 hotel properties. The property may contain architectural barriers that the ADA may have identified, or the property may have failed any public accommodation legal statement. The ADA, for example, mandates that the properties be accessible to all guests, including those with disabilities. Failure to meet the minimum ADA requirements can result in substantial penalties and legal action.

Individual property investigations

A DOJ investigation could find the property owner liable with a government settlement of $100,000 and up to $5,000 per day in civil penalties. An owner could even be personally liable if found illegally by the owner or operator. If the owner has a legal defense, it may be under investigation by the DOJ or the ADA. If the hotel is subject to an ADA lawsuit, we are currently representing multiple owners, including vacancies, personal injuries and medical claims.

Architectural

The hotel industry is an essential part of our economy, and one of the largest employers in the country. ADA lawsuits and Department of Justice investigations have created a significant amount of uncertainty for hotel owners and operators.

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Determine whether the ADA expects the property and determine whether the property is in compliance with the ADA.

The court may also determine whether the property is in compliance with the ADA. Pervious court decisions have determined that the property may or may not be covered by the ADA. The court may also determine whether the property is in compliance with the ADA. A court may also determine whether the property is in compliance with the ADA. The court may also determine whether the property is in compliance with the ADA. The court may also determine whether the property is in compliance with the ADA. The court may also determine whether the property is in compliance with the ADA. The court may also determine whether the property is in compliance with the ADA. The court may also determine whether the property is in compliance with the ADA. The court may also determine whether the property is in compliance with the ADA. The court may also determine whether the property is in compliance with the ADA. The court may also determine whether the property is in compliance with the ADA.