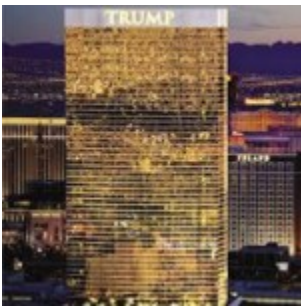


Trump Hotel False Advertising Suit Against Culinary Workers Union Gets Chopped

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by Sandra Edelman



Section 43(a) of the Lanham Act is generally considered a broad-based vehicle for asserting false advertising claims. For the owner and operator of the Trump Hotel Las Vegas, however, the statutory section was not broad enough to encompass alleged falsehoods in a flyer circulated by a culinary workers union attempting to unionize the Hotel. A federal district court in Las Vegas granted a motion to dismiss the lawsuit on the ground that the challenged statements did not constitute commercial advertising or

promotion. Trump Ruffin Commercial LLC v. Local Joint Executive.

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The dispute arose when candidate Trump visited Las Vegas in October 2015 during the Republican primary. Because the Trump Hotel Las Vegas did not have a large enough space to host a campaign event, Trump's speech took place instead at the Treasure Island Hotel. The union distributed a flyer accusing Trump of staying at the Treasure Island, a union hotel offering higher wages and better health insurance rather than staying at the Trump Hotel Las Vegas, which the hotel workers were trying to unionize. Contending that the flyer was an attempt to damage the reputation of the Trump Hotel Las Vegas, the plaintiffs brought suit for false advertising under Section 43(a) of the Lanham Act and deceptive trade practices under Nevada state law.

According to the court, to state a claim for false advertising, the challenged statements must not only be allegedly false, with a tendency to deceive, the statements must also have been made in "commercial advertisement or promotion." To meet this standard, the allegedly false statement must be: (1) commercial speech; (2) by a defendant who is in commercial competition with plaintiff; (3) for the purpose of influencing consumers to buy defendant's goods or services; and (4) the representations must be disseminated sufficiently to the relevant purchasing public to constitute "advertising" or "promotion" within the industry.

Here, the plaintiffs failed to state a claim because the Complaint merely alleged that the union's statements were "designed to call attention to the [labor] dispute" and intended to harm the Trump Las Vegas Hotel. Having dismissed the Lanham Act claim, the court declined to exercise supplemental jurisdiction over the Nevada state law claim.

The lesson of the case? Section 43(a) was just not huge enough for the Trump Hotel plaintiffs.