

Minnesota Supreme Court Rules Trademark Infringement Covered by "Advertising Injury" Insurance Provision

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A ruling by the Minnesota Supreme Court is the latest development in a nationwide trend that has the potential to save businesses significant litigation-related expenses. The Court recently ruled that many businesses' general liability, business-owner liability, and umbrella liability insurance policies require insurers to defend and indemnify trademark infringement lawsuits, even when the policies do not explicitly mention trademark infringement litigation coverage.

In the Minnesota case, Tolkien Enterprises sued a Minnesota travel agency called "Hobbit Travel" for trademark infringement of Tolkien's "hobbit" mark. Hobbit Travel filed a claim with its insurance company seeking coverage under an "advertising injury" provision. The insurance company denied coverage on the basis that the policy did not have a specific trademark infringement provision, and more generally, that trademark infringement did not constitute an "advertising injury." The Court, however, found that the absence of "trademark infringement" coverage in the language of the policy did not mean that it was specifically excluded from coverage. It also determined that the use of "hobbit" was an "advertising injury," and thus fell within the scope of coverage.

While the Minnesota court's ruling is limited to that state, it represents the latest in a string of decisions dating back to 1993 that allow businesses to demand trademark infringement coverage of their insurers under "advertising injury" policy provisions. Michigan adheres to the minority view, namely that trademark infringement is not usually covered. Since each state differs, a review of your company's insurance policy may reveal whether it contains such a provision, and whether trademark infringement lawsuits may be covered.

For more information on trademark-infringement policy coverage in general, information on policy coverage in a particular state, or for a copy of the case referenced, please contact our team of Miller Canfield Trademark attorneys:

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