

Balough Law Offices, LLC

TEL: 312.499.0000 | ADDRESS: 1 N. LaSalle St., Suite 1910, Chicago, IL 60602

Losing Bidder's PowerPoint Defamed Competitor

A manufacturer of high-speed turbo blowers used by waste water treatment plants not only defamed its competitor but also violated the Lanham Act, the Seventh Circuit found.

The appellate court found that the PowerPoint presentation by KTurbo, Inc. contained false accusations, the company was warned repeatedly that its accusations were false, the company ignored the warnings, and it refused to investigate the truth of the accusations. "Its conduct was not only disreputable but reprehensible," Judge Richard Posner wrote.

KTurbo lost a bidding contest to supply high-speed turbo blowers to a waste water treatment plant in Utah to Neuros Co., Ltd. Disappointed by losing the bidding contest, KTurbo's chief executive officer HeonSeok Lee prepared a series of PowerPoint slides and related tables that accused Neuros of fraud in its representations during the bidding process. KTurbo then used the slides in presentations to a number of engineering firms that advise waste water treatment plants on which turbo blowers to buy.

In a bench trial, the lower court awarded Neuros \$10,000 in actual damages for per se defamation. The court also awarded punitive damages of \$50,000. Neuros did not appeal the amount of the damages, but that did not stop Judge Posner from observing that the "punitive damages award of \$50,000 was too small, and though Neuros is not seeking more, we cannot forbear to note that the conduct of KTurbo was outrageous. It is a substantial company and should have been ordered to pay substantial punitive damages."

Neuros did appeal the finding by the trial court that the PowerPoint presentations to engineers were insufficient to sustain Lanham Act and Illinois Uniform Deceptive Trade Practices Act causes of action because there was no evidence that the statements were made to the general public. "Well of course not," Posner wrote, "members of the general public do not buy high-speed turbo blowers or advise waste water treatment plants on the purchase of such blowers. There is no basis for limiting the Lanham Act to advertising or promotion directed to the *general* public, and the case law does not do that."

The Lanham Act permits the award of attorneys' fees to the prevailing party, so by finding that the Act applies, the trial court on remand can consider awarding attorneys' fees.

"Without meaning to prejudge the determination on remand, we point out that KTurbo persisted in its false representations to the engineering community concerning Neuros's blowers even after the suit was filed and compelling evidence was presented that the representations were false," Posner wrote. "This weighs in favor of an award of attorneys' fees by indicating that this part of KTurbo's defense . . . was objectively unreasonable: KTurbo persisted in denying that the slide show and related marketing activities were deceptive long after it was evident that the denial was frivolous."

[Neuros Co., Ltd and Aviation and Power Group, Inc. v. KTurbo, Inc.](#), 7th Circuit No. 11-2260, 11-2375, issued October 15, 2012.

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