

'Cheese'-y Comedy Product Not an Advertising Idea

Media Law Bulletin

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The case of *The Oglio Entertainment Group, Inc. v. Hartford Casualty Ins. Co.*, 200 Cal. App. 4th 573 (2011), analyzes the distinction between copying an advertising idea and copying a product that is advertised in the context of liability insurance coverage for "personal and advertising injury."

The underlying lawsuit was filed by a recording artist against his recording company, Oglio Entertainment Group, Inc. The artist records and performs music under the name "Richard Cheese." Cheese is described in the underlying pleadings as "a comedy character...who performs 'lounge' or 'swing-style' versions of current and popular rock, hip-hop and pop songs." On August 1, 2001, the artist entered into a recording contract with Oglio that provided that Cheese would record an album of lounge-style recordings of popular songs, tentatively titled "Lounge Against the Machine" (LATM). The recording agreement was for three years.

LATM was allegedly a financial success. In 2001, when Oglio attempted to exercise its option for the artist to record a second album, a dispute arose regarding the amount of the advance. As a result, Oglio allegedly hired different artists to record similar music. In 2002, Oglio released two albums: "Diary of a Loungeman" by "Bud E. Luv," consisting of lounge versions of Ozzy Osbourne songs, and "Sub-Urban" by "Jaymz Bee & The Deep Lounge Coalition." After the expiration of the recording agreement, Oglio allegedly continued to use Richard Cheese as a domain name to market and promote Oglio's albums, including LATM and the competing albums.

The artist filed suit against Oglio, alleging breach of contract, violation of the right of publicity, intentional interference with prospective economic advantage and breach of the covenant of good faith and fair dealing. Oglio tendered its defense to Hartford and Hartford disclaimed coverage, in part, because "[u]sing a stage name is not an 'advertising idea'" and "use of another's domain name is not any enumerated covered offense." Oglio filed the instant suit against Hartford. Hartford answered and filed a motion for judgment on the pleadings, arguing there was no coverage under the policy. The trial court granted the motion and sustained a demurrer to Oglio's first amended complaint on the same basis. The demurrer was granted without leave to amend.

On appeal, the court agreed that the underlying complaint did not allege an "advertising injury," which is defined in the policy as "[c]opying in your 'advertisement,' a person's or organization's 'advertising idea' or style of 'advertisement.'" The court found that the allegation that Oglio was attempting to divert sales away from Cheese by releasing the competing albums did not constitute the copying of an *advertisement, advertising idea or style of advertisement* (emphasis in original). Instead, Oglio was allegedly seeking out artists to copy the Cheese *product* and later advertised and sold a competing *product* (emphasis in original). The court thus affirmed the judgment of the trial court.

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