



Weston Benshoof Litigation Newsletter

Legal News and Information from the Business Litigation Group of Weston Benshoof Rochefort Rubalcava & MacCuish LLP

Fall 2007

WB Good News

Recent Successes

Court of Appeal Affirms Significant Jury Verdict in Favor of Client Software Developer

Business Litigation Partners Andy Gilford, Scott Leipzig and Stephanie Jones successfully defended an appeal challenging a \$2.9 million dollar jury verdict. The case involved a dispute over the right to profits from medical software developed by the firm's client for the hospitalist industry, when the defendants subsequently changed their business model and refused to sell the software in the marketplace. On appeal, Defendants claimed that the award must be overturned because it was too speculative, which argument the Court of Appeal wholly rejected, issuing its opinion only 10 days after the Court heard oral argument.

WB Obtains Published Opinion on Successful Motion for Summary Judgment

Kurt Osenbaugh, John Arya, and Sayaka Karitani successfully defended BP West Coast Products LLC against its former franchisee who alleged that BPWCP violated the Petroleum Marketing Practices Act by making a decision regarding nonrenewal of the franchise in bad faith and outside the normal course of business, and by subsequently selling the service station to plaintiff at a price above its fair market price. Weston Benshoof filed a motion for summary judgment arguing that BPWCP's decision to not renew the station was a reasonable business judgment, and that its offer to sell the station was bona fide, as the offering price for the service station was valued by an independent appraiser and consistent with the appraisal, both as a matter of law. The Court not only granted BPWCP's motion for summary judgment in its entirety, but it also published a favorable opinion that will be helpful to franchisors in other actions. The published decision is found at *Anand v. BP West Coast Products LLC*, 484 F. Supp. 2d 1086 (C.D. Cal. 2007).

Dismissal of Individual's Claims of Unfair Competition and False Advertising

Kurt Weissmuller successfully defended numerous companies against unfair competition and false advertising claims asserted by an individual. The Plaintiff bought dozens of bottles of our clients' dietary supplement products simply for the purposes of bringing a lawsuit, claiming the products were mislabeled and unsafe. The complaint alleged causes of action for unfair competition under California Business Professions Code §17200; false advertising and violation of the Consumer Legal Remedies Act ("CLRA"). The Firm filed a demurrer to these causes of action arguing that the Plaintiff lacked standing to pursue the claims because he did not, for purposes of unfair competition and false advertising, suffer an injury in fact or lose any money or property due to the companies conduct, and for the purposes of the CLRA claims, buy the products for his own personal, family or household use. Rather, it was clear from the facts in the complaint that Plaintiff suspected the products contained an ingredient not accounted for on the product label, purchased the products without regard to the companies advertising, and tested them for purposes of filing a lawsuit. The Court sustained our clients' demurrer without leave to amend and ordered the action be dismissed, concluding that these statutes were not meant to afford such plaintiffs redress.

Weston Benshoof Client Prevails in Real Estate Partnership Dispute

Business Litigation partner Scott J. Leipzig and Real Estate partner C. Michelle Marlo successfully handled a JAMS arbitration before Judge Robert E. Thomas (Ret.) regarding the proper accounting of partnership assets. The case involved a dispute among a group of real estate investors who purchased various real estate holdings and subsequently invested significant partnership assets to renovate the holdings. Following the renovations, major disputes arose regarding the efficacy of the construction charges and management fees charged by certain partners, and regarding the proper allocation and accounting of partnership revenues derived from the properties. The Firm's client prevailed on almost every issue in dispute, and, as the prevailing party, was awarded its costs associated with the arbitration process.

Lisa Gilford Appointed to Board of Step Up Women's Network

Weston Benshoof is pleased to announce that partner Lisa Gilford recently became a Boardmember of Step Up Women's Network, a nonprofit organization dedicated to empowering women and girls by strengthening community resources available to them. Ms. Gilford's practice focuses on business and commercial litigation, products law, intellectual property and environmental matters. She has served as counsel for several major members of the communications, oil and gas, aerospace, chemical manufacturing, and pharmaceutical industries. Ms. Gilford has been involved in the nonprofit group for over two years and previously served on the Host Committee for the organization's 2006 Inspiration Awards.

Weston Benshoof Co-Hosts NAWL Cocktail Reception at the ABA Annual Meeting in San Francisco

On Friday, August 10, 2007, Weston Benshoof co-hosted the National Association of Women Lawyers cocktail reception at the Rincon Center, in connection with the ABA Annual Meeting in San Francisco. The reception was catered by the popular Bay Area restaurant, Yank Sing, and gave the attending women lawyers the opportunity to catch up and network with one another.

Sayema Hameed Elected President of the South Asian Bar Association of Southern California Public Interest Foundation

Weston Benshoof is proud to announce that Sayema Hameed has been elected President of the South Asian Bar Association of Southern California Public Interest Foundation for the 2007-08 term, commencing on July 1, 2007. The Public Interest Foundation is a 501(c)(3) charitable organization dedicated to supporting public interest activities for the benefit of the South Asian community. The Foundation raises funds to support organizations in the public interest sector that provide critical legal and social services to Southern California's South Asian communities.

Quotables:

"If what you have done yesterday still looks big to you, you haven't done much today." *Mikhail Gorbachev*

"He can compress the most words into the smallest ideas of any man I ever met." *Abraham Lincoln (on a fellow lawyer)*

"A synonym is a word you use when you can't spell the word you first thought of." *Burt Bacharach*

Michele Powers Co-Chairs Class Action Program in Washington D.C.

Weston Benshoof is sponsoring and partner Michele Powers will be co-chairing "The Future of Class Action Litigation in America" Program on October 24-26, 2007 at the Ritz-Carlton Hotel in Washington, D.C. The faculty for this program, composed of the leading judges, academics, practitioners and policy makers in the field, will discuss and debate the most recent developments in Class Action law and its future in America. They will offer applied insights on frontline class action topics such as The Class Action Fairness Act of 2005, Multi-District Litigation panels, multi-state litigation, applicable Federal Rules of Civil Procedure and the current direction of the Federal Rules Advisory Committee, class-wide arbitration and various other leading edge issues facing today's class action litigants.

If you would like more information about the program or if you would like to register online, please visit the ABA/TIPS website at www.abanet.org/tips.

14th Annual DuPont Legal Minority Job Fair Hosted by Weston Benshoof

On Saturday, August 11th, 2007, Weston Benshoof hosted the West Coast's 14th Annual DuPont Legal Minority Job Fair at the firm's Los Angeles office. The event provided forty minority law students selected from hundreds of resumes across the nation with the opportunity to interview for summer associate positions with primary law firms in the DuPont legal network.

"The Job Fair is one of the most significant business-driven initiatives for promoting diversity in the legal community," says Edward Casey, managing partner of Weston Benshoof. "It provides the DuPont primary law firms with tremendous access to some of the best minority candidates in the country, and it has become an essential part of our own firm's recruiting efforts over the years."

The Job Fair has been held on the West Coast for the past eleven years, and Weston Benshoof has hosted all eleven of these fairs. Other DuPont primary law firms that participated in this year's event included Ballard Spahr; Crowell & Moring; Faegre & Benson; K & L Gates; Kaye Scholer; Lewis and Roca; McGuireWoods; Schwabe, Williamson & Wyatt; and Squire, Sanders & Dempsey. Janet Bivins, Corporate Counsel at E.I. du Pont de Nemours and Company, also attended and was the guest speaker at the fair's networking luncheon held at the nearby Omni Los Angeles Hotel.

The DuPont Legal Minority Job Fair was first organized in 1994, as part of the DuPont Legal Model. Today, the Fair is a multi-city event, bringing in over 500 resumes from top minority law students and professionals around the country, resulting in many hirings. For more information about the DuPont Legal Model and Minority Job Fair, please visit www.dupontlegalmode.com.