

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LIFESTYLE LIFT HOLDING, INC.,

Plaintiff,

vs.

Case No. 07-14450
Hon. A. Tarnow

LEONARD FITNESS, INC., and
JUSTIN LEONARD,

Defendants.

TRANSCRIPT OF JUDGE'S RULING ON MOTION TO DISMISS

BEFORE THE HONORABLE ARTHUR J. TARNOW
UNITED STATES DISTRICT COURT JUDGE
Detroit, Michigan
Friday, May 2, 2008

APPEARANCES:

FOR PLAINTIFF:

NEIL B. PIOCH, ESQ.
Draper Rubin & Shulman
29800 Telegraph Road
Southfield, MI 48034

FOR DEFENDANTS:

PAUL A. LEVY, ESQ.
PUBLIC CITIZEN LITIGATION GROUP
1600 - 20th Street, N.W.
Washington, D.C. 20009

BARBARA M. HARVEY, ESQ.
1394 E. Jefferson Avenue
Detroit, MI 48207

* * *

TO OBTAIN CERTIFIED TRANSCRIPT CONTACT:
Denise A. Mosby, CRR, RMR
313.961.6230

1 Detroit, Michigan

2 Friday, May 2, 2008

3 Afternoon Session

4 * * *

5 **THE COURT:** Okay. Why don't you sit down.

6 **MR. PIOCH:** Thanks, Your Honor.

7 **THE COURT:** Just so you know, this is not an opinion
8 that I wrote before. This is an outline that my law clerk has
9 written to help me save my eyes a little bit. And most of it is
10 on jurisdiction, which I'm not going to decide today. I'm going
11 to assume for the purposes of this that I do have jurisdiction.

12 It's my understanding that the crux of your Lanham
13 Act claim is based on, one, the fact that there's a trademarker
14 here and, two, that the activities of the Defendant either
15 dilutes the trademark, causes confusion, or is equivalent to
16 false advertising.

17 Is that a fair summary?

18 **MR. PIOCH:** Yes, Your Honor.

19 **THE COURT:** Okay. And in terms of the confusion, I
20 think the Defendant has the better of the argument because the
21 path is not confusing in this case, as my questions indicated and
22 your answers.

23 In terms of whether this is a commercial,
24 noncommercial, or a hybrid, I would say it's much closer to
25 noncommercial, but even if it were a hybrid, the result would be

1 the same. And that is the First Amendment trumps, especially
2 here where it's a matter of opinion -- it's clearly delineated as
3 a matter of opinion.

4 And it doesn't dilute the trademark in the sense that
5 the Lanham Act was enacted to protect. Rather, to the extent
6 that it uses the trademark and reinforces it, to the extent it
7 disparages it, that's a matter of opinion. And that's protected
8 by the First Amendment.

9 There used to be a -- maybe this was in your day,
10 Mr. Levy -- in Dearborn who used to say as long as you get your
11 name in the paper, it can't be bad publicity. And that's my
12 reference to the trademark as not being diluted.

13 In terms of false advertising, they're not
14 advertising a product that's in competition with the trademark's
15 product. Yes, at least from their point of view hopefully
16 they're making some money by having this web site and people
17 coming to it and selling advertising. But it hasn't been alleged
18 that any of the advertising is in direct competition with the
19 services or the procedures protected by the trademark.

20 And, therefore, the Motion to Dismiss is granted for
21 the reasons stated on the record. And we will prepare an order
22 to that effect. And by the time you get back to your offices,
23 you should have an e-mail copy of that.

24 Thank you very much.

25 **MR. PIOCH:** Thank you, Your Honor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. LEVY: Thank you, Your Honor.

MS. HARVEY: Thank you, Your Honor.

(Proceedings adjourned at 3:00 p.m.)

- - -

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

I, Denise A. Mosby, Federal Official Court Reporter, do
certify that the foregoing is a correct transcript from the
record of proceedings in the above matter.

s/ Denise A. Mosby
DENISE A. MOSBY, CRR, RMR
Federal Official Court Reporter
124 Theodore Levin US Courthouse
231 W. Lafayette Boulevard
Detroit, MI 48226
313.961.6230

Dated: May 5, 2008