

ISSUE INSTRUCTION

The positions of the parties can be summarized as follows:

Plaintiff Wine & Canvas Development LLC brought this lawsuit against the Defendant Christopher Muylle, and alleges that Mr. Muylle violated federal trademark laws, including a claim for trademark infringement and a claim for false designation of origin.

Mr. Muylle denies that he infringed on the Plaintiff's trademark or made any false designation of origin.

To prove its claim for trademark infringement, Wine & Canvas must prove, by a preponderance of the evidence, that Mr. Muylle used Wine & Canvas's mark [WINE AND CANVAS] in interstate commerce in a manner that is likely to cause confusion, mistake, or deception as to the source, origin, sponsorship, or approval of Mr. Muylle's product or service.

To prove its claim for false designation of origin, Wine & Canvas must prove, by a preponderance of the evidence, that Mr. Muylle used in commerce a word, term, name, symbol, or device, any false designation of origin, a false or misleading description of fact, or a false or misleading representation of fact, in a manner that is likely to cause confusion, mistake or deception as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services or commercial activities by another person.

You are to decide whether the Plaintiff Wine & Canvas has proved its trademark claims of trademark infringement and false designation of origin for the time period after November 18, 2011.

Mr. Muylle has asserted an affirmative defense of trademark misuse. Under this defense, a plaintiff in a trademark action cannot recover where the trademark suit is a sham such that the suit was objectively baseless in the sense that no reasonable person could realistically expect success on the merits, and there was subjective intent to use the litigation to interfere directly with the business relationships of a competitor.

Defendant Christopher Muylle has brought an affirmative claim against the Plaintiff Wine & Canvas and against Anthony Scott, Tamara McCracken, and Donald McCracken for abuse of process.

Wine & Canvas, Mr. Scott, Ms. McCracken, and Mr. McCracken deny that they have committed an abuse of process.

To prove his claim for abuse of process, Mr. Muylle must prove, by a preponderance of the evidence, that Wine & Canvas, Mr. Scott, Ms. McCracken, and/or Mr. McCracken intentionally used a legal procedure that would not be proper in the normal course of the case, with an ulterior motive to achieve a result it was not designed to accomplish, and Mr. Muylle was damaged as a result.