



ARE Patent Law Alert: "Any" Person Has Standing For False Marking Claim

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(September 7, 2010) On August 31, 2010, the U.S. Court of Appeals for the Federal Circuit in *Stauffer v. Brooks Brothers, Inc.*, No. 2009-1428, -1430, -1453 (Fed. Cir. Aug. 31, 2010), further confirmed the broad scope of individuals to have standing to bring a false marking claim under 35 U.S.C. § 292.

Mr. Stauffer brought a *qui tam* action against Brooks Brothers, et al. for false marking bow ties with patent numbers that expired in the 1950s. In response to Brooks Brothers' motion to dismiss, the district court dismissed Mr. Stauffer's action for lack of standing due to his failure to adequately plead any injury in fact. Thereafter, the district court denied a motion to intervene by the U.S. government.

On appeal, the Federal Circuit reversed the district court on both grounds.

First, the Federal Circuit found that Mr. Stauffer does not need to allege an injury in fact to himself, but instead "Stauffer must allege that the United States has suffered an injury in fact causally connected to Brooks Brothers' conduct that is likely to be redressed by the court." Slip op. at 9. However, the Court went on to hold that violation of the false marking statute inherently constitutes an injury to the U.S. government. Mr. Stauffer thus had standing as the *qui tam* plaintiff seeking redress on behalf of the U.S. government.

Second, the Federal Circuit reversed the District Court's order refusing to allow the U.S. government to intervene. The Court recognized that the U.S. government would be bound by the results of the Stauffer action and, if Mr. Stauffer were unsuccessful, would not be able file another action in the hope of achieving a better result. Slip op. at 15-16.

Finally, the Federal Circuit remanded the case to address the merits of Mr. Stauffer's claim, including Brooks Brothers' motion to dismiss pursuant to Rule 12(b)(6) "on the grounds that the complaint fails to state a plausible claim to relief because it fails to allege an 'intent to deceive' the public—a critical element of a section 292 claim—with sufficient specificity to meet the heightened pleading requirements for claims of fraud imposed by" Rule 9(b). Slip op. at 14.

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