

Insurance Coverage for Lanham Act False Advertising Claims

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A recent article, "[Insurance Coverage for False Advertising Claims](#)," which was published in the March 2012 issue of *Insurance Coverage Law Bulletin*, discusses some of the caselaw holding that insurance companies are obligated to provide coverage for false advertising claims, particularly under the advertising injury section of a CGL policy.

Companies in a wide variety of industry sectors increasingly face lawsuits by competitors and customers alike under Section 43(a) of the Lanham Act, and similar statutes, based upon false advertising claims. These lawsuits typically allege that the defendant's representations about its own product or a competitor's products are false, misleading, or disparaging, and frequently include additional common law or statutory claims for unfair competition and disparagement.

It is vital that companies look to their standard liability insurance policies as a potential source of payment not only for judgments or settlements that might be incurred, but also for the legal fees and related costs of defense. Insurers frequently contend that no coverage exists by claiming that their policies do not cover business risks such as "false advertising," and further contend that if there is any doubt whether the insuring clauses cover such claims, then policy exclusions eviscerate coverage in any event. All too often, policyholders accept the insurer's position at face value and fail to pursue coverage. This is a costly mistake, as courts have often found coverage for these types of claims for companies who have chosen to fight the insurers' denials. The only way to determine whether a particular false advertising claim is covered is to examine closely the underlying lawsuit, the policy, and the caselaw in the relevant jurisdiction. The article referenced above discusses the general framework for advertising injury coverage under CGL policies, arguments in favor of coverage, and arguments against the applicability of the exclusions most frequently asserted by insurers to deny coverage.

For additional information on insurance recovery issues, don't miss the session, "Insurance Coverage for Data Privacy Liability -- Do You Already Have It, and If Not, Can You Buy It?", which will be presented at the Kelley Drye [Privacy Law Symposium: Enforcement, Litigation and Risk Management](#) event on April 23 in Los Angeles and via webinar.