



Kelley Drye Wins Case for Atlantic Horizon International

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On April 27, 2010, the New York First Department Division affirmed the dismissal of all claims against Kelley Drye's client Atlantic Horizon International, Inc., a distributor of health and beauty products under the Verseo® brand and an affiliate of long-time client The Elysee Group.

In 2007, plaintiff MP Innovations filed a lawsuit claiming that it had presented Atlantic Horizon with the idea and marketing concept for a personal detoxification product, known as the Detox Patch, which naturally extracts toxins from the body during sleep. The complaint alleged that the two sides entered into a contract under which Atlantic Horizon agreed to sell the product and to pay MP Innovations a percentage of all sales generated. The plaintiff claimed that Atlantic Horizon proceeded to successfully sell the Detox Patch using the plaintiff's marketing concept, but later refused to honor the contract to pay the plaintiff based upon a percentage of sales.

Kelley Drye moved to dismiss the complaint based upon a number of pleading deficiencies, including that the contract claim was barred by the statute of frauds and that the complaint did not allege that the concept for a Detox Patch was novel to support an unjust enrichment claim. During the eight months while the motion to dismiss was pending, the parties engaged in extensive discovery focusing primarily on the alleged novelty of the Detox Patch concept. The Kelley Drye team developed evidence that the plaintiff was hardly the inventor of the Detox Patch product, that Atlantic Horizon was otherwise aware of this product concept and that Atlantic Horizon did not use any part of the marketing concept allegedly provided by the plaintiff. Kelley Drye discovered that a part of the plaintiff's marketing concept was actually a near word-for-word copy of a marketing campaign by a Japanese company for a similar, popular, overseas product.

After the Supreme Court granted Atlantic Horizon's motion to dismiss, Atlantic Horizon opposed the plaintiff's motion to amend its complaint, arguing that the amendment was frivolous given the evidence that had been developed. Although motions to amend pleadings are ordinarily "freely granted," in December 2009 the Supreme Court denied the plaintiff's motion. The Court found that the series of emails, which the plaintiff claimed constituted an enforceable contract, did not satisfy New York's statute of frauds and that the Detox Patch concept lacked the element of novelty to support an unjust enrichment claim. The Appellate Division affirmed that decision with a written opinion.

Kelley Drye partner Jonathan K. Cooperman represented Atlantic Horizon in this matter.