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Pryor Cashman Wins \$1.5 Million Intellectual Property Case On “Unjust Enrichment” Theory After Week-Long Trial

After a one week trial conducted by Pryor Cashman partners Jamie M. Brickell and James S. O'Brien and associate Jacob Radcliff before U.S. District Judge George Daniels in the Southern District of New York, the Court in an April 9, 2007 decision found in favor of Pryor Cashman's Japanese client, TMS Entertainment, LTD (TMS), and awarded damages, interest, fees and costs on an unjust enrichment theory.

TMS is a large producer of animated television programs in Japan. BKN (which stands for Bohbot Kids Network) Entertainment, Inc. (BKNE) was a U.S. company that produced and marketed children's animated programming. BKNE, through a series of Distribution Agreements, leased from TMS the right to distribute a popular children's animated television show called *Monster Rancher*. The Distribution Agreements provided that BKNE could not assign the *Monster Rancher* rights without ensuring that the assignee assumed the payment obligations under the Distribution Agreements.

BKNE, at the direction of its president and sole shareholder, Allen Bohbot, assigned all of its assets, including the distribution rights to *Monster Rancher*, to a German company that Bohbot had formed, without any of the payment obligations, all of which remained with BKNE. The German company, BKN International (BKNI), subsequently went public and, at one point, its stock had a market value of more than \$100 million. BKNE, however, was stripped of its assets and left with no ongoing business. When TMS ultimately sought to enforce its rights against BKNI, it was told that the German company had paid for the rights by giving stock to BKN's parent company, another Bohbot-controlled entity called BKN, Inc.

While Judge Daniels, at an earlier stage of the proceedings, dismissed all of TMS's claims against BKNI premised on contract theories, Pryor Cashman was able to demonstrate at trial that, in spite of the elaborate legal stratagems employed by the defendants, BKNI was enriched at TMS's expense in a manner that was inherently unfair. In a classic example of not seeing the forest for the trees, a number of large, international law firms advised BKNI that TMS could not recover against it for breach of contract but failed to consider the catch-all claim of unjust enrichment put forward by Pryor Cashman, which claim Judge Daniels did not dismiss and which formed the basis for the ultimate trial verdict.