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Pryor Cashman Obtains Constitutional Victory in N.J. Federal Court Over State Attorney General Regarding Unregistered Trademark Rights

In late August 2007, Pryor Cashman obtained a temporary restraining order against New Jersey Attorney General Anne Milgram's allegedly unconstitutional enforcement of New Jersey's newly enacted "Truth in Music Act" that had the effect of nullifying unregistered trademark rights of two clients.

At a preliminary injunction hearing on September 7, 2007, the Attorney General conceded at the conclusion of oral arguments that her interpretation did conflict with the federal Lanham Act and the U.S. Constitution, and that unregistered trademarks must be entitled to equal protection under the "Truth in Music Act" as registered trademarks.

The Attorney General had initially claimed that the Truth in Music Act required three groups operating under unregistered trademarks (The Platters, The Cornell Gunter Coasters and The Elsbeary Hobbs Drifters) to identify themselves as "Tribute" or "Salute" groups or else to obtain approvals to perform from "original" members of 1950s groups.

Seventeen other states have recently enacted similar statutes and this case is believed to be the first legal challenge to such laws. The Hon. Dickinson R. Debevoise of the U.S. District Court for the District of New Jersey in Newark presided in the matter of *Singer Management Consultants, Inc. and Live Gold Operations, Inc. v. Anne Milgram*, No. 2:07-cv-03929-DRD-ES.

Pryor Cashman Litigation Group partner William Charron and associate Mona Simonian handled the case, with assistance from Bankruptcy Group partner Richard Levy, Jr.