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Pryor Cashman Wins Affirmance of Summary Judgment Victory Dismissing Arizona Iced Tea Claims

Pryor Cashman's summary judgment victory on behalf of its client SoBe brand beverages owned by Pepsico, Inc., was affirmed by the N.Y. Appellate Division, Second Department, on January 20, 2009. The Court affirmed the dismissal of the complaint of the company which owns and sells Arizona iced tea, ending litigation that had been ongoing for a dozen years.

The litigation began in 1997 in U.S. District Court in Manhattan as a claim for trade dress infringement brought by Arizona against the fledgling SoBe company, based on the alleged similarity between the shape of the SoBe bottle and an earlier Arizona bottle design.

After defeating a motion for a preliminary injunction in federal court, and following several years of discovery, Pryor Cashman succeeded in obtaining summary judgment on the trade dress infringement claim. The decision was affirmed by the Court of Appeals for the Second Circuit.

Plaintiffs had also included common law pendent claims for theft of trade secrets, unfair competition and breach of fiduciary duty by the founder of SoBe, who had been an Arizona executive. At the time the summary judgment motion was granted, the District Court, in its discretion, dismissed the supplemental state claims without prejudice, leaving them for disposition in state court if plaintiffs wished to pursue them.

Thereafter, the Arizona companies started the action in state court for theft of trade secrets, unfair competition and breach of fiduciary duty. Following four years of additional discovery, motion practice, and an interlocutory appeal to the Appellate Division, Second Department and, on the eve of trial, the court, on a motion for reargument, granted full summary judgment in favor of defendants and dismissed the complaint. The Appellate Division has now affirmed that dismissal.

Pryor Cashman litigation partners Sandy Goldman and Tom Ferber led the litigation team, assisted by associate Jacob Radcliff.

To read the Appellate Division decision, please [click here](#). To read the lower court decision, please [click here](#).