Bob Marley Is Still Creating New Law

Bob Marley died in 1981, but arguments about the rights to his music continue to this day.

On September 18, 2013, the Ninth Circuit Court of Appeals issued its decision in Rock River Communications, Inc., v. Universal Music Group, Inc., No. 11-57168 (9th Cir. 2013). It concerns a dispute over the licensing rights to several early recordings by Bob Marley and the Wailers. Rock River, a music producer, seller and distributor, intended to remix and release an album containing 12 of these recordings after it obtained a nonexclusive license from San Juan Music Group, a music licensing company that had an agreement with Lee Perry, who produced many of Marley's early works.

Universal Music Group (UMG) claimed that it already had exclusive licensing rights to all of the recordings that Rock River was intending to remix and distribute. Consequently, UMG sent a cease-and-desist letter to Rock River demanding that it not release its album. The spotty recordkeeping in 1960s Jamaica raised questions about the provenance of the ownership of the licensing rights to these songs.

UMG also called and sent letters to Rock River's business partners asserting that Rock River's album violated its exclusive licensing rights. For example, UMG sent a letter to Apple requesting that it remove the album from its iTunes store, threatened to sue Relativity Music Group if it used one of the songs in the soundtrack to the 2010 film "Dear John" and urged EMI Music Group to withdraw from negotiations with Rock River to distribute the album outside North America. Consequently, Apple pulled Rock River's album from iTunes, the soundtrack to "Dear John" did not feature any music from Rock River and Rock River's distributors stopped distributing the album. In January 2008, Rock River sued UMG asserting various claims including intentional interference with prospective economic advantage.

The business tort of intentional interference with prospective economic advantage (IIPEA) is a common way in which a business can seek redress from another business that disrupted or diverted their commercial relationships with a third party. In essence, under this legal theory, plaintiffs must show that it was reasonably probable that they would have realized an economic advantage or benefit from its dealings with another party but for defendant's intentional and wrongful interference.

The district court granted summary judgment for UMG holding that, because Rock River did not have direct evidence showing it was licensed to use three of the twelve tracks on its remixed album, it could not show that it had a valid business expectancy which UMG jeopardized.

The Ninth Circuit disagreed with this conclusion and held that Rock River did not have to prove that it had a valid business expectancy in order to proceed with its IIPEA claim. Citing the lack of California authority requiring proof of a valid business expectancy as a requirement for a IIPEA claim, the Ninth Circuit held that the burden of proving the validity or legality of the business expectancy was on the defendant, who may plead it as an affirmative defense. A link to the Ninth Circuit opinion can be found here. -
http://cdn.ca9.uscourts.gov/datastore/opinions/2013/09/18/11-57168.pdf

Although Rock River involved licensing agreements to copyrighted music, it is possible that this holding will be implicated in other contexts. Take, for example, a lawsuit involving a contractor suing another contractor for outbidding it for a project. If the plaintiff contractor was unlicensed to perform some of the construction work, the defendant may be able to use this fact and assert an invalidity defense to argue that since the preconditions for winning the contract were not met, the plaintiff should not be able to win under an IIPEA theory.

Rock River should be a welcome boon for businesses considering litigation under an intentional interference with prospective economic advantage theory. Businesses defending IIPEA lawsuits should be aware of the Rock River decision and the necessity of affirmatively pleading that the business expectancy interfered with was invalid or illegal. Businesses on the defense side of these types of lawsuits should also be prepared to conduct extensive discovery on the issue of business expectancy validity, thoroughly examining any contracts the plaintiff claims it lost as a result of the defendant's interference.

Rock River shows that, in the context of aggressive actions among business competitors, the line between permissible and unlawful conduct can be slim. Specifically, if you are considering taking action encouraging third parties to avoid doing business with a certain person or entity, you should talk to an experienced business litigator first.

If you have any questions or comments, I would be delighted to hear from you.

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