

OHIO CASE SUMMARIES
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Ohio case summaries are brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. Except for holidays, these summaries will be provided Wednesday and Friday of each week. To discontinue receiving this service, please call Jared Wagner at 937-224-3333 or email Jared at jawagner@green-law.com.

Court of Appeals: First District

Case Name: *Westfield Ins. v. Factfinder Marketing Research, Inc.*, 2006-Ohio-4380

Decided: August 25, 2006 (posted August 25, 2006)

Issue(s): Advertising Injury / Trade-Dress and Trademark Infringement

Summary of Opinion: In February of 1989, Defendant entered into a license agreement with Message Factors, Inc. ("MFI"), under which defendant was given access to MFI's proprietary methods, trade dress, and trademarks. In October of 2003, MFI brought suit against Defendant, alleging trade-dress infringement, trademark infringement, and misappropriation of trade secrets. Accordingly, Defendant sought coverage under the portion of its commercial general liability policy that provided for a defense against any suit seeking damages because of an "advertising injury" that is caused by an offense committed in the course of advertising. The definition of "advertising injury" under the policy included the "misappropriation of advertising ideas or style of doing business." The trial court granted Defendant's insurance company summary judgment but did not state why. On Appeal the First District reversed the trial court's decision and found trade-dress and trademark infringement claims qualify as misappropriation of advertising ideas or style of doing business. In making this decision, the First District specifically rejected the Sixth Circuit Federal Court of Appeal's ruling in *Advance Watch v. Kemper National Ins. Co.* (C.A.6, 1996), 99 F.3d 795. However the First District did hold that the trade-secret misappropriation claim did not fall under the definition of and "advertising injury." On the issue of whether the advertising injury was in the course of advertising, the appellate court found that trade-dress and trademark infringement claims always involve advertising and that there was a nexus in this case between Defendant's advertising activity and the advertising injury alleged by MFI.

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Court of Appeals: Eighth District

Case Name: *Filippi v. Ahmed*, 2006-Ohio-4368

Decided: August 24, 2006 (posted August 24, 2006)

Issue(s): Motion to Intervene / Abuse of Discretion

Summary of Opinion: Defendant is a doctor who was previously convicted of criminal rape and gross sexual imposition related to his gynecological treatment of a number of patients. State Farm Fire and Casualty Company ("State Farm") had insured Defendant's medical practice and agreed to represent the practice under a reservation of rights. State Farm sought to intervene in the action in order to conduct limited discovery and submit jury interrogatories. The purpose of these interrogatories was to avoid a general verdict, which might be so broad that it would fall within the coverage of the State Farm policy. The trial court denied the motion to intervene. On appeal, a majority of the appellate court reversed, finding that the trial court had abused its discretion. Both Defendant and Plaintiff in the underlying civil matter fought the intervention in an effort to secure a general verdict and ensure that State Farm would provide coverage. Defendant wanted coverage to avoid personal liability and Plaintiff wanted coverage to have a deep pocket to pursue. The Majority found that neither reason was a legitimate reason to oppose intervention.

Judge Kilbane dissented from the above opinion. She stated that the trial court's decision should be affirmed because State Farm had failed to set forth a claim or defense as required by Civ.R. 24(C) and State Farm had filed the motion to intervene only three months before trial started despite having been aware of and involved to some extent through Defendant since the case's inception.

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