

# WALKER WILCOX SECURES DISMISSAL OF COMPLAINT SEEKING COVERAGE FOR TRAILER MANUFACTURER

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## Court Holds Insurer Need Not Cover Manufacturer Sued for Selling “Knockoff” Trailers

Christopher A. Wadley and Cassandra L. Jones secured dismissal of a complaint for their client, a commercial general liability insurer, in the United States District Court for the Northern District of Indiana. The district court held that the insurer had no duty to defend or indemnify a trailer manufacturer against an underlying lawsuit alleging that the manufacturer sold “knockoff” trailers using a third-party claimant’s proprietary design. In particular, the court held that the underlying complaint did not allege “trade dress” infringement in an “advertisement,” as required to trigger coverage for personal and advertising injury.

According to the underlying complaint, the manufacturer and claimant entered into a contract under which the manufacturer agreed to build trailers in accordance with the claimant’s design for the claimant to sell to its customers. The manufacturer allegedly agreed not to use the trailer’s design for any other purpose. Nonetheless, the claimant alleged that the manufacturer sold a “knockoff” trailer using the claimant’s design, and the claimant sued the manufacturer for breach of contract, breach of the covenant of good faith and fair dealing, and tortious interference with contractual relations. The insurer disclaimed coverage, and the manufacturer filed suit against the insurer in the United States District Court for the Northern District of Indiana.

The policy covered damages due to personal and advertising injury, which included injury arising out of “infringing upon another’s...trade dress...in your ‘advertisement.’” The policy defined “advertisement” as “a notice that is broadcast or published to the general public...about your goods, products or services for the purpose of attracting customers.”

In dismissing the lawsuit, U.S. District Judge Damon R. Leichty concluded that the underlying complaint did not allege trade dress infringement. The court reasoned that trade dress infringement refers to the total image of a product, including features like “size, shape, color or color combinations.” Nonetheless, for a trade dress infringement claim, the court noted that the claimant must establish the claimed trade dress is primarily nonfunctional, distinctive, and would cause confusion in the marketplace due to similarity. The court concluded that, in the underlying case, the claimant alleged that the manufacturer had copied functional design features that did not constitute “trade dress.” Accordingly, the court concluded that the insurer had no duty to defend or indemnify the manufacturer. In addition, the court concluded that the manufacturer’s placement of its logo on the “knockoff” trailer was not an “advertisement,” as that term was defined in the policy.

The case is *Aluminum Trailer Co. v. Westchester Fire Insurance Co.*, No. 3:20-cv-721, 2021 WL 736215 (N.D. Ind. Feb. 25, 2021).