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Nothin' from Nothin' Leaves Nothin': Axiom Worldwide Inc. v. Excite Medical Corp. et al.

Friday, January 2, 2015

Axiom Worldwide Inc. v. Excite Medical Corp. et al.

The U.S. Court of Appeals for the Eleventh Circuit affirmed a district court's \$1.32 million judgment in favor of a medical device maker, ruling that it never owned the trademarks in question and therefore could not have passed the rights in the trademarks to a successor.

Axiom Worldwide, Inc. (Axiom, Inc.) developed, manufactured and sold medical products and owned various trademarks for use in connection with its products. In 2007, Axiom, Inc. transferred all of its assets, including its "goodwill," to non-party Axiom Worldwide, LLC (Axiom, LLC) via a warranty bill of sale.

In 2011, Axiom, Inc. filed a lawsuit for trademark infringement, copyright infringement and misappropriation of trade secrets against HTRD and its affiliated companies and several former Axiom, Inc. employees (collectively, the defendants) arguing that the defendants made counterfeit devices and tried to steal its trademarks.

The district court found that the rights in the trademarks had not been transferred from Axiom, Inc. in connection with the warranty bill of sale and that the defendants infringed Axiom, Inc.'s trademarks. The district court further found that the former employee Saleem Musallam was individually liable for \$85,000 in statutory damages and that HTRD's U.S.-affiliated Excite Medical Corp. was liable for \$1.32 million.

The 11th Circuit affirmed the district court, noting, "[b]ecause we agree with the district court (and Billy Preston and Bruce Fisher, for that matter) that 'nothin' from nothin' leaves nothin', and because we find no error in any of the district court's other challenged rulings, we affirm."

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