

Record Award in False Advertising Case

Case Study

Partners Terence Ross, Shaya Rochester, Michael Justus and Tami Sims led the Katten litigation team that successfully represented communications and software company Windstream Holdings, Inc. and its subsidiaries (Windstream) in a seven-count complaint against Charter Communications Inc. and Charter Communications Operating, LLC (together, Charter), a competitor of Windstream. Steven Reisman, Chair of Katten's New York Insolvency and Restructuring Practice, is Windstream's principal attorney at Katten and represents Windstream in matters unrelated to the litigation against Charter.

In April 2019, Windstream filed a seven-count complaint against Charter, which sought, among other things, damages for violating the Lanham Act and contempt sanctions for violating the Bankruptcy Code's automatic stay. Charter was accused of tricking customers into thinking Windstream would be shutting down with an advertising campaign that included sending 800,000 mailers urging customers to switch to Charter's Spectrum brand for telecommunications services. Windstream also claimed Charter breached a contract under which it was to provide services to Windstream customers by terminating those services without 30 days' warning.

At the very outset of the litigation, Katten strategically moved for and obtained a Temporary Restraining Order to promptly stop Charter's advertising campaign. After a further hearing conducted by the Court, Katten obtained a Preliminary Injunction to enjoin Charter's advertising campaign. The Preliminary Injunction included a rare provision requiring Charter to pay for "corrective advertising" to be sent to Windstream customers in an effort to undo some of the damage caused by Charter's false advertising. After extensive discovery, the Court granted partial summary judgment to Windstream on all counts and set Count VI (violation of the automatic stay) and Count VII (equitable subordination) for a bench trial. Trial was held during the last week of April and first week of May 2020, in one of the first virtual trials of the then-new coronavirus pandemic.

On April 8, 2021, the US Bankruptcy Court for the Southern District of New York awarded Windstream more than \$19 million in compensatory sanctions for multiple violations of the Bankruptcy Code's automatic stay by Charter. The Court held that Charter had engaged in a false advertising campaign designed to capitalize on Windstream's Chapter 11 bankruptcy by falsely telling Windstream customers that its bankruptcy filing meant Windstream was going out of business and customers had to switch their service to Charter. The decision is believed to be the largest compensatory sanction ever issued for violation of the Bankruptcy Code's automatic stay.

