



Katten Wins Dismissal of Antitrust Suit on Behalf of Speedo

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A bi-coastal team of Katten lawyers that included Karen Ash, Jim Calder and David Sherman from New York, David Gonen from Washington, D.C., and Greg Korman, Yuval Rogson, Sally Wu, Rebecca Ganz, Sara Karubian, Carol Winter, Zia Modabber and Stuart Richter from Los Angeles recently won summary judgment for our client, Speedo, the performance swimwear division of Warnaco Swimwear, against rival swimwear manufacturer TYR Sport Inc. The case, which has received significant press coverage, arose out of the high-tech swimsuit wars that preceded the 2008 Beijing Olympics. Speedo introduced a revolutionary full-body swimsuit called the LZR Racer. It was the swimsuit of choice for most elite swimmers leading up to the Beijing Olympics and was worn by the vast majority of the U.S. and international athletes who won medals at the Olympic games, including Speedo sponsored athletes Michael Phelps and Dara Torres.

In its lawsuit, TYR alleged that Speedo violated federal and state antitrust laws, federal and state false advertising and unfair competition laws, and improperly interfered with TYR's sponsorship contract with Olympic swimmer Erik Vendt. Essentially, TYR claimed that co-defendants USA Swimming and U.S. National Team Coach Mark Schubert, because they are sponsored by Speedo, coerced elite swimmers to wear the Speedo LZR swimsuit, instead of TYR's competing brand, and made false and misleading statements about the performance of the LZR swimsuit as compared to TYR's products.

The court granted an initial motion for summary judgment in favor of Speedo and the other defendants on the false advertising and antitrust claims, finding that TYR had failed to show "coercion" that resulted in consumers choosing the Speedo LZR Swimsuit over the TYR product. In its recent ruling the court granted summary judgment on TYR's remaining theory—that Speedo, USA Swimming and Coach Schubert violated the antitrust laws by "disparaging" TYR's products. The court found that Coach Schubert's statements praising the Speedo LZR swimsuit were not actionable, and that in any event, they did not cause a "significant" and "enduring" impact on competition. The court also rebuked TYR's efforts to seek reconsideration of the court's prior order granting summary judgment on TYR's false advertising claims.

CONTACTS

For more information, contact your Katten attorney or any of the following attorneys.



Karen Artz Ash

+1.212.940.8554

karen.ash@katten.com



Gregory S. Korman

+1.310.788.4421

greg.korman@katten.com



Zia F. Modabber

+1.310.788.4627

zia.modabber@katten.com

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