

## **Central Manufacturing, Inc. v. Brett et al.**

492 F. 3d 876 (7th Cir. 2007)

Authored by Jonathan A. Rogers

Central Manufacturing, Inc. ("Central"), the registrar of the "Stealth" trademark for baseballs, brought a Lanham Act and state law infringement action against Brett Brothers Sports ("Brett Bros."), a baseball bat manufacturer that produced a bat of the same name. Brett Bros. is owned in part by Baseball Hall of Famer George Brett. The United States District Court for the Northern District of Illinois granted summary judgment which Central subsequently appealed. The issues on appeal are whether the evidence presented by Central was sufficient for a finding of infringement, whether the district court abused its discretion by ordering cancellation of the registration, and whether the granting of attorney's fees to Brett Bros. was warranted. The district court's judgment was affirmed.

An action for trademark infringement can only succeed if the plaintiff owns the mark. Registration provides prima facie evidence of ownership that can be rebutted by competent evidence. More importantly, the mark must be used in commerce to ensure that entrepreneurs do not reserve brand names, making their competitors' products more costly. If a court decision raises doubts about the validity of a trademark registration, a court may cancel the mark, so long as there is no abuse of discretion. Attorney's fees and other costs may be awarded to the prevailing party "in exceptional circumstances."

In 1984, Central's owner and sole shareholder, Leo Stoller registered the Stealth mark for a variety of sporting goods and registered the mark for baseball bats in 2001. Brett Bros. sold its first Stealth bat in 1999 and has sold 25,000 since. Stoller has licensed the mark and sent various cease-and-desist letters to business such as Kmart, Panasonic and even the stealth bomber. Similarly, Stoller sent a letter to Brett Bros. demanding \$100,000. Brett Bros. argued that the mark was never used in commerce and requested that Stoller produce evidence to the contrary. The district court found that no valid evidence was produced that the mark was ever used in commerce and the court of appeals agreed. The court of appeals also found that there was no abuse of discretion in cancelling the mark as the registrant's asserted rights to the mark were invalid. Finally, the court of appeals determined that under the Lanham Act there was no clear error in awarding attorney's fees as Central's actions in bringing the case were oppressive.

The court of appeals affirmed the district court's finding that Central produced no evidence of trademark infringement in that no documents were filed, that Stoller misled the court with his testimony, and that his documents made a mockery of the proceeding. Therefore, the cancellation of the mark and the grant of attorney's fees were justified.