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Update: First Circuit Holds That Rejection of a Trademark License by a Bankrupt Licensor Extinguishes the Licensees Right to Further Use of the Licensed Marks

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Written by Alfred S. Lurey, Michael S. Pavento and Jennifer Giordano-Coltart, Ph.D.

In an article in the May 2017 issue of *The Licensing Journal*, we reported on the decision of the Bankruptcy Appellate Panel for the First Circuit (the BAP) in *In re Tempnology LLC*. A key issue in that case was whether the rejection under Section 365 of the Bankruptcy Code in a licensor's bankruptcy case of an executory contract that includes a trademark license extinguishes the non-debtor licensee's right to continue to use the licensed marks for the period prescribed in the contract. The BAP, adopting the rationale articulated a few years earlier by Judge Easterbrook in *Sunbeam Products, Inc. v. Chicago American Mfg., LCC* concluded that: (1) Under Section 365(g) of the Bankruptcy Code, the debtor-licensor's rejection of the executory contract at issue simply constituted a breach by the licensor of that contract, which, under applicable non-bankruptcy law, did not terminate the license or otherwise eliminate the licensee's right to continue to use the licensed marks in accordance with the terms of the license, and (2) reversed the bankruptcy court's decision to the contrary.

Related People







Alfred S. Lurey

t 404.815.6360

alurey@ktslaw.com



Michael S. Pavento

t 404.815.6213

mpavento@ktslaw.com



Jennifer Giordano-Coltart, Ph.D.

t 919.420.1716

jgiordano-coltart@ktslaw.com