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Bankruptcy Will Not Prevent A Licensee From Usinq Trademarks

This year, the Supreme Court of the United States issued a decision that resolved a long-standing, deep split among different courts, which determined the fate of trademark license agreements in bankruptcy proceedings. For almost 30 years, various courts ruled differently on the issue of the licensee's rights after the licensor filed for bankruptcy. A licensee is the party that receives a license, and a licensor is the party that grants the license (typically the owner of the intellectual property rights). In Mission Product Holdings Inc. v. Tempnology, LLC, the Supreme Court held that if a debtor-licensor breaches a license agreement, the licensee's rights will not be terminated and the licensee can continue to use the trademarks, as granted under the license agreement. In other words, a debtor-licensor's bankruptcy proceeding, that gives the debtor the power to reject many types of contracts, no longer allows the debtor to terminate the rights of the licensee to continue to use the licensed trademarks.

It is easier to understand this case with the relevant facts. Tempnology, LLC ("Tempnology"), the debtor in this case, developed exercise clothing and accessories. In 2012, Tempnology gave Mission Product Holdings Inc. ("Mission") a license to distribute its products and a non-exclusive license to its trademark. Three years later, Tempnology filed for bankruptcy, and terminated the license agreement to Mission. Mission sued and ultimately won, as the Supreme Court held that an attempt to reject a license agreement does not terminate that agreement in bankruptcy proceedings. Thus, bankruptcy by itself, cannot terminate a licensee's continued use of the trademark.

When Peacock Law P.C. drafts license agreements, we have bankruptcy and termination provisions in these agreements. With this ruling from the Supreme Court, we will all need to consider the consequences of bankruptcy more carefully.