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# Covington Nabs $2M In Fees In Quiksilver Infringement Suit

By **Kat Greene**

*Law360, Los Angeles (January 8, 2014, 7:13 PM ET)* -- A California federal judge on Tuesday awarded attorneys at Covington & Burling LLP nearly $2 million in fees for securing a $500,000 win for their client, a family-owned company that was battling surfwear maker Quiksilver Inc. over a trademark.

U.S. District Judge David O. Carter shut down Quiksilver's argument that Covington had done unnecessary extra work for its client World Marketing Inc., and racked up higher bills, finding that most of the purported extra work was in response to repetitive motions by Quiksilver, according to Tuesday's decision.

"Quiksilver's implication — that perhaps WMI should have followed Quiksilver's example and staffed the case with the same resources that Quiksilver itself used — ignores the fact that Quiksilver lost on all claims at trial and WMI won," Judge Carter wrote in Tuesday's decision.

The attorneys' fees award was reduced slightly from the original request in proportion with a reduction in the damages awarded to Covington's client WMI, a family-owned company that was defending its "Visitor" brand clothing against Quiksilver's "VSTR" line.

Quiksilver had argued that the Covington attorneys were doing excess work on legal theories that were later discarded, but the judge ultimately decided that "extra" work was necessary to secure the win for WMI.

"Quiksilver does not cite any specific hourly reports or specific tasks that the court should consider 'excessive,' but rather implies that WMI counsel's decision to carry out discovery on legal theories of recovery that did not end up succeeding should be written off as bad or unnecessary lawyering," Judge Carter wrote. "The court finds that the opposite is true."

Quiksilver began selling the VSTR line, which was inspired by surfer Kelly Slater's world travels, in June 2011.

Quiksilver offered to buy WMI's trademark, according to the suit, but its offer was rejected.

After WMI sent the surfwear maker a cease-and-desist letter, Quiksilver filed a declaratory relief action in March 2012. WMI, which obtained registration of the Visitor mark in 1998, then countersued for trademark infringement.

A jury in July awarded WMI $3.5 million in punitive damages for Quiksilver’s infringement, but Judge Carter reduced those damages down to just half a million in Tuesday’s decision.

The judge found, first, that though Quiksilver’s harm was intentional and malicious, it did not cause WMI physical harm, and the economic harm was found to be $125,000.

The punitive damages represent a multiple of that amount, and would be sufficient to deter further infringement, the judge determined.

“This number is based on a fairly low finding of ‘reprehensibility,’” Judge Carter wrote, “and a determination that $375,000 in punitive damages, along with the not insubstantial compensatory damages award of $125,000, acts as a sufficient deterrent to prevent future misconduct while also staying within the bounds of constitutionality.”

WMI asked for trebled damages, but the judge denied it, finding that the company was receiving exactly what Quiksilver had offered to pay them originally for the trademark, and that the damages Quiksilver is being forced to pay is enough of a deterrent to stop it from further infringement, according to the decision.

“We are gratified that Judge Carter recognized not only that Quiksilver willfully infringed World Marketing's rights, but that World Marketing litigated the case responsibly and efficiently,” Covington partner Neil Roman, co-lead counsel for WMI, told Law360 on Wednesday.

Representatives for Quiksilver did not immediately respond to requests for comment Wednesday.

Quiksilver is represented by Brent H. Blakely and Cindy Chan of Blakely Law Group, and O'Melveny & Myers LLP.

World Marketing is represented by Clara J. Shin, Hope I. Hamilton, Neil K. Roman and Matthew D. Kellogg of Covington & Burling LLP.

The case is QS Wholesale Inc v. World Marketing Inc., case No. 8:12-cv-00451, in the U.S. District Court for the Central District of California.

--Additional reporting by Matthew Heller. Editing by Stephen Berg.