

Post Award Complaint Statement

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Re: Case: 74 147 E 01095 06

Introduction

Dear Angela, this letter is to address our concerns regarding the ruling of the case. While the AAA does not allow for appeals, we believe that the AAA has the obligation to address this matter. The following information is addressed to the AAA and Mr. Carley. The main issue certainly is that the American Inventors Protection Act of 1999 (Act), a Federal law, which we brought up at the Hearing, was not addressed by Mr. Carley. At a minimum he should have mentioned it in the award letter. We have also found errors of fact in Mr. Carley's award letter, and unfortunately, many errors in Mr. Flores final brief.

This letter also contains information regarding the concerns discussed above, but it does not include all of the details of our concerns, because that would make this letter much longer than it already is. Our main contention, as stated, is that Mr. Carley did not make any effort to mention this Act in his award letter. We assume it is because he felt he was under California law, but considering Mr. Flores denial in his final brief about the Act not applying to IP&R, it appears that Mr. Carley took his word for it and did not bother to include it. Furthermore, this was not new evidence that we were introducing, this is a Federal law. According to Joe Weiss, a lawyer for the government whose job it is to interpret the Act says it does apply to IP&R. They are not a company that evaluates inventions, they are a company that promotes inventions, hence making them an advertiser, and they do make up brochures and offer TV commercials.

Overview

We appreciate the effort that Mr. Carley put into this Hearing. For whatever reason though, it appears to us that Mr. Carley gave up, and instead of reviewing all of our material and considering it, found it was easier to simply award the case to IP&R. We are deeply concerned as to his explanation, or lack of a complete explanation as to:

- Why he did not find that we met the burden of proof?
- Why the American Inventors Protection Act of 1999 was not considered or mentioned in the award letter?
- Why statements in the award letter closely resemble statements in the Defendants final brief?
- Why he failed to take action when IP&R clearly did not transfer all of the information that we asked for in discovery?
- How IP&R cannot be considered in breach of contract and how Mr. Carley thinks that in consideration of the contract, which is the governing document, that he can make a decision that IP&R being late with the research report and the brochure is not considered a breach of contract?

- Why he does not mention anything about Mr. Flores continual leading of witnesses in the trial?
- Why he has errors of fact in the award letter?

It is impossible for us to know what Mr. Carley was thinking, how he approached this, and what evidence in specific he was looking for; thus we covered all the bases with our evidence.

Substance

Why Mr. Carley did not find that we met the burden of proof? With the large body of relevant evidence that we have, it is inexplicable to us given the poor explanation in the award letter. Mr. Carley states that "Based on the evidence presented in this case, Claimants failed to carry their burden of proof and demonstrate that the contract should be set aside based on fraud or based on any other ground." The fact is, the contract sets the material deliverables and their respective delivery dates, but there are obvious lackluster performance is a separate issue. To not consider all of the examples of poor performance in our Exhibits relative to the contract and to what IP&R told us in a letter after we paid the money as seen in Exhibit 13, is egregious.

Regarding fraud, the "integration provision" does not itself bar evidence against IP&R from consideration. IP&R knowingly told us expectations that they knew were not true or would not occur. While the facts are that we were told as justification to the \$40,000 campaign that they would attend 10 to 12 tradeshows, they would attend a November 15th, 2005 trade show and create a brochure for it, that they did not go through the contract with us line by line nor could have John Ruege gone over the contract with us line by line because we were only at IP&R two hours and the only things we did were take a tour and go to the conference room, that we were told by John Ruege to expect \$750,000-\$1,000,000 at the most over the course of three to four years before someone copied our idea, that their obligation of the requirements in the American Inventors Protection Act of 1999 were not given to us, and that their success rate was around 25 to 30%. Given that we do not have a signed contract, when could we have possibly gone over each line of the contract, unless it was over the phone? None of the phone records indicate any conversation long enough to do such a thing. Not only did John Ruege lie on the stand, he was part of the fraud.

While it is clear that there is no written documentation from Dave Stickel, Mr. Newberry apologized to me on the phone and said that he was sorry that there were not 10 to 12 tradeshows nor a November 15th, 2005 trade show, but that it was overstated, and that was a mistake as seen in Figure 1 below from Exhibit 34. Nowhere did Jeff Newberry say that we were not told those things. So how can these facts be in dispute when there is a log entry by Jeff Newberry himself? IP&R might deny it, but that doesn't mean it's in dispute if it is a fact. Just because someone says the sun doesn't exist, doesn't mean that it is true, because we can see it every day.

Figure 1

*** JEFF (jeff n) *** April 14, 2006 at 10:55am

good talk with Scott- concerned about where money is going- promised 12 trade shows- said that was wrong and apologized -asked about Nov show that was promised- upfront and told him that information he was given about shows was over stated- pleased with Miyoung and Geoff and said that I would call him back next week with an action plan

The success rate was confirmed by John Ruege in testimony that the statistic does exist. He could not remember the value though. He is of course sure that he never said the 25 to 30% that we claim, he is sure that they went over the contract line by line, he is sure that he did not tell us a monetary figure of what to expect, but like Dave Stickel, it was so long ago. How can they be sure of anything? Review Exhibit 19, Page 5, for one of emails where I mention the 25 to 30% success rate. Review Exhibit 59b and see Robert Enriquez complaint to the USPTO, where they told him a 25% success rate. In the same exhibit, Steve Barbarich claims that they do not say that, and that it is mandated by law that they put their success rate in the contract. However, we never had any statistic in our contract. In addition, Exhibit 46, a legitimate MSNBC article, quotes one of IP&R employees saying that they have a 22% success rate. These all have to do with IP&R, and all have to do with the same topic that I am talking about. Why Mr. Carley would not allow this relevant information to be submitted is unknown.

Regarding performance, it is not realistic to believe that a potential customer who becomes a customer by signing the contract and paying IP&R, would not expect a certain level of performance based on, including but not limited to, conversations with the Director(s) of Product Selection, unsolicited brochures and their associated letters, and further letters from IP&R after the contract Effective Date is set. How can a company not be responsible to perform, or be held accountable, in a manner that is parallel to what they advertise, regardless of the deliverables and dates of the contract? In Exhibit 19, Page 7, I tell Jeff Newberry, "Hi Jeff, I am still awaiting that accounting information. So far I am not impressed with IP&R and as I said, what we were sold, and what we have, are not consistent." What is it about the performance that Mr. Carley says doesn't apply with Exhibits like this?

Mr. Carley states in his "bio" that he has experience with false advertising, and this was a reason why we chose him. Mr. Carley denied to us the opportunity of having all of our examples of their poor performance considered in the ruling of this case. From having multiple product managers, performance surveys that were not sent, late, and not even responded to, communication gaps for a month at a time, and no accountability for following through with requests for documentation of what their process is, and not even being accountable of where the money is being spent.

Taking into account Section 11 of the contract, one cannot know that they are being defrauded or for that matter, if the terms of that contract are fair and in good faith. We can sign a contract in "good faith," but we are not the ones performing the work. So, why are we held with handcuffs trying to prove our case, when we did our part to put \$9,750 down upfront, that I Scott Berens personally paid, and were supposed to continue to pay them, while they were not acting in "good faith" as seen in their performance and lack of meeting completion dates?

While we understand what Section 11 states, Mr. Carley appears to not have taken into consideration the performance of IP&R other than the deliverables which were late, but makes a judgment that it did not affect our overall campaign. Mr. Carley cannot make a judgment on whether or not a document being late affects the campaign, because Mr. Carley does not know what could have happened in light of having the

documents at the proper time. Mr. Carley must look at the facts. While Section 11 may not be ambiguous, Mr. Carley unfairly based his ruling on Section 11 of the contract, throwing out anything other than, "Were the deliverables completed?"

Regarding statements made by IP&R prior to the execution of the marketing agreement, it is demonstrated above, that there is documentation in the form of a Customer Relationship Management entry as in Exhibit 34. There are some disputes, but written documentation, e-mails, and phone calls, cannot be ignored. However, Mr. Carley seems to have willingly dismissed this information. Mr. Carley writes that the evidence "... appear[s] to be contradicted by the express terms of the Marketing Agreement signed by Claimants." It is important to note that we signed the contract on October 28, 2005 before we went to San Francisco to meet with them on November 1, 2005. We were told the expected amount of money by John Ruege in the conference room in San Francisco. It is true that we still had a few days to cancel the contract for any reason after visiting San Francisco; however, \$750,000- \$1,000,000 sounded pretty good. So why should we cancel the contract when they have a 25% to 30% success rate? Between 10 to 12 tradeshows, the money potential, the success rate and our completed product, we felt we had a good chance. We thought to ourselves, 2 ½ people out of every 10 get licenses, that seems good.

Why was the American Inventors Protection Act of 1999 not considered or mentioned in the award letter? The American Inventors Protection Act of 1999 (Act) was not taken into consideration by Mr. Carley from what we can read in the award letter. This is a Federal law designed to protect the inventor, such as us, and to help keep the invention promotion firms honest. Contacting the AAA and asking whether or not a Federal law applies in Arbitration, we were told that if we brought it up at the Hearing then it has to be considered and enforced if necessary. If we would have had access to the statistics that the Act obligates IP&R to give us, we never would have signed the contract and never would have gotten involved with IP&R. Reviewing the Act below we find that by the mere fact that IP&R failed to disclose the information required by the Act, that we are entitled to the actual damages that we have incurred, which in this case, is everything that we spent related to the campaign, arbitration costs, travel fees, and any punitive damages. If we had the opportunity to view the information in the Act, which is IP&R's duty to give us, then we never would have signed the contract. We could not make an informed decision as to whether or not we wanted to work with IP&R without that information.

We were not aware of the Act at the time we were evaluating IP&R. However, it is IP&R's responsibility to abide by the Act, and therefore is obligated to let us know about this information. It being their "duty" to give it to us, we do not have to ask for the information. IP&R will claim that they are exempt and that they are not an advertiser or involved in TV or mass media. Mr. Flores claims that IP&R is not an invention promoter, we are sophisticated and wealthy, we have a utility patent, and therefore the Act does not apply. IP&R is involved in TV and mass media as found in their brochure in Exhibit 8a, Page 4. Whether it is customer specific is irrelevant, due to the fact that they do not "evaluate," they "promote" and "market" products. Looking up the word "promote," a thesaurus yields us "advertising." In addition, Exhibit 17 mentions that they made a "television infomercial" for a recent client, who received a guaranteed \$250,000 a year. Exhibit 13 mentions "promotion" in the first sentence.

Joe Weiss, a lawyer for the government at the USPTO office, at 571.272.7759, interprets this law differently. The Act applies to the IP&R as a company if they promote using brochures or other such media. IP&R is obligated to give the potential customer the statistical and historical information. USC Title 35, Chapter 29, §297(a), "An invention promoter shall have a duty to disclose the following information to a customer in writing, prior to entering into a contract for invention promotion services."

We believe that we sustain the burden of proof, as in testimony, it was shown that the employees do not give out the information required by the Act, nor are they told to disclose any information in the Act. This Federal law is in place to protect us. Testimony proved that they did not supply us with these documents, and in fact, at the Hearing, Dave Stickel said that these statistics were in the contract. Mr. Stickel later denied that he said that only minutes after he did.

Why statements in the award letter closely resemble statements in the Defendants final brief? Looking at Mr. Flores final brief, and reviewing Mr. Carley's award letter, they seem indistinguishable in some areas. There are several examples below:

Mr. Flores mentions that "Jeff Newberry testified that IP&R attended 4 tradeshow at which it actively marketed the Power Key." Mr. Carley writes: "Respondent also attended at least for tradeshow on behalf of Claimants..." We may not have had suspect thoughts regarding this if the statement was correct. However, the monthly reports prove that they only attended three tradeshow and this was brought up at the Hearing, in the pretrial statement, and the final brief. If Mr. Carley truly went through our evidence, then he would have seen that they only attended three tradeshow. Thus, we contend that Mr. Carley used the information from Mr. Flores final brief and not purely from any testimony.

Mr. Flores writes: "A review of the monthly reports sent to Power Key reveals that IP&R did contact the appropriate entities on behalf of Power Key - 56 of them in total!" Mr. Carley writes, "[IP&R] ...followed up with at least 50 industry contacts to attempt to secure a license on behalf of Claimants." While the numbers are different, it is another fact that was not entirely discussed at the Hearing. Thus, the mention of the quantity of contacts in the award letter is of interest as they were never discussed in detail at the Hearing.

Mr. Flores writes: "The evidence has shown that IP&R complied with all of its obligations and that any delay in the research report was immaterial and concurrent with the brochure delay caused by Mr. Berens of Power Key." "Furthermore, as will be discussed below, any delay of the Report was concurrent with delay caused by Mr. Berens changes to the marketing brochure." "Any delay regarding either one [report or brochure] was not a material issue or breach." Mr. Carley writes: "Moreover, some evidence was presented during the Hearing that suggests that some of the errors were caused by Claimants." "The weight of the evidence presented at the Hearing suggest that the delay did not have a material impact on Respondent's marketing efforts or in any way prejudiced Claimants." "Thus, I do not find that the brief delay in the delivery of these documents represent a material breach of the Marketing Agreement." Mr. Flores says the deliverables, although late or not material breach. Mr. Carley says that the deliverables do not present a material breach. Apparently, setting aside the fact that deliverables are late is standard procedure, when in any project though, any delay generally results in a monetary penalty.

We see Mr. Flores saying that we delayed the brochure which also caused a delay in the research report, and Mr. Carley saying that the delay was of no impact and that we caused delays from errors we made. Unfortunately for us, Mr. Carley misunderstood the error, (singular,) but felt content, stating that our errors, (plural,) were relevant to the case and should be held against us. Of all the things that IP&R did, Mr. Carley does not point those out, but he is happy to point out one thing that we did, that he did not even explain correctly. The truth is, that we received the brochure in PDF or JPEG, we modified it, and sent it back to them. We have no obligation to do this, but we did it because the brochure from IP&R was so horrible. Granted, I made an error in my spelling on my added text, one time, by mistake and I blamed it on them. However, that is immaterial, because that is not in their documents on their computers; it is only on the PDF or JPEG that I sent them. All they had to say was, "We did not make this error." Instead, Mr. Carley blames it on us, along with Mr. Flores, saying that somehow that miniscule thing caused delays.

In addition, Mr. Carley failed to take into consideration that I said to IP&R, "Give me the file and I will make the brochure." That is the easiest way to do it. But Mr. Carley did not review all of the evidence. Exhibit 11, Page 5, we find the following text from December 20, 2005, when I am writing to Zack Gideon: "Here is what really needs to happen. I need the artwork in an EPS or AI file format ver 10 or CS, so I can make the changes and insert the items I want. We will continue to go in circles until you simply give me the file so I can do it. Having done all the work myself over the past 5 years as it is, I am not about to accept anything less than near perfect." How is it that Mr. Flores states in outrage that I am expecting advertising piece quality work, when their brochure, Exhibit 8a, Page 3, says that they use "... top graphics designers from San Francisco to create high quality brochures for its inventions." They say the brochure needs to look like a "finished product" and they use "...expert graphic manipulations...." What is it that is difficult to understand here?

Mr. Flores writes: "None of the discussion of the extra contractual representation really matters, however, because all such representations and agreements are extinguished by the contract's integration clause of Section 11." Mr. Carley writes: "...the parties agreed in Section 11 of the Marketing Agreement to an integration provision and the contract is unambiguous." Recent court decisions, as stated earlier, have ruled that "integration provisions" such as is in our contract, does not bar any relevant evidence that may add to mounting a case of fraud of inducement.

Mr. Flores writes: "Most importantly, Power Key was in a special position because it had already had manufactured samples. They were much more valuable than brochures in marketing the product at trade shows and by mail to manufactures." "They had the samples and were not hampered in any way by the lack of a report or brochure." Mr. Carley writes: "This was because respondent had received a completed product, which it could -- and apparently did -- bring to trade shows." The frustration with these similar statements is that Mr. Carley is using the testimony of IP&R employees. However, there is not one area in Mr. Carley's award letter that discusses our evidence with any noticeable effort. Mr. Flores writes about samples, Mr. Carley believes him. The contract is useless because it is not enforced until Mr. Carley uses Section 11 against us, again. Mr. Flores stating that our samples were much more valuable than the brochures for marketing the product at trade shows and by mail to manufactures is not completely correct. Mr. Newberry testified that if they have too many products, it looks like a garage sale, so they do not always take the product to the trade show. Hence, they need a brochure. Even Adam Nafea said you have to have a brochure. Mr. Flores directed Mr. Carley's statements, as he was leading the witnesses at the Hearing.

Why Mr. Carley failed to take action when IP&R clearly did not transfer all of the information that we asked for in discovery? Throughout the discovery process I complained that we received very little information from Mr. Flores. He refused to give us any documentation for the trade shows or any accounting information related to our campaign. His excuse was that IP&R does not keep track of that information for each customer. However, at the trial, Jeff Newberry, under questioning, said that he could have given us his expense reports. We wanted this information, because we wanted to verify that they were actually doing the work they were supposed to be doing. However, IP&R hides their information, because they knew that we would be able to hold it against them. What Mr. Newberry's testimony revealed, is that Mr. Flores failed to give us all of the information at discovery that we asked for. Mr. Carley asked Mr. Flores in a conference call if he had given us all the information whether it was in lists or not, regarding the case to satisfy discovery. Mr. Flores said yes, and Mr. Carley said he was satisfied with that. However, now the testimony reveals that Mr. Flores failed to give us all the information. Mr. Carley being seemingly partial, failed to acknowledge that falsehood an indicator of the fraudulent practices of IP&R, and we get stuck with being treated unfairly.

How IP&R cannot be considered in breach of contract and how Mr. Carley thinks that in consideration of the contract, which is the governing document, that he can make a decision that IP&R being late with the research report and the brochure is not considered a breach of contract? Simply put, the deliverables were late, and they do affect the campaign, whether IP&R admits it or not. We paid for that contract, and yes it is true that IP&R is hiding behind Section 11 of the contract, but we have now been deprived of the few things that we can hold IP&R accountable to, "due dates." It does not matter if Mr. Carley thinks the breach did not affect the campaign, and I reiterate that it does, as a breach of contract is in effect if any part of the contract is not completely met. The three-month extension had nothing to do with late deliverables; it was because of poor performance. A three-month extension, they did not even want to document, is no substitute for a Spring campaign, which is the best time to market and promote a product. Mr. Carley comes to this conclusion, and supports fraud and poor performance, whether knowingly or not, and to keep us from getting back what we so much-deserved, "our money."

As for the brochure, we gave that to Zack Gideon on December 6, which means that it was due January 20, and the letter accompanying the brochure sent to us was not written until January 26, 2006. This is a breach of contract, and at that time they had roughly \$13,000 of our money. The delays in the brochure are because their art department put it on the back burner as Adam Nafea testified, and at least two times they had spelling errors. There is nothing in our contract that says that the art department is only limited to work on our project for the first draft, which apparently they assume it is going to be the final, and then put it on the back burner to get done when they have time. The brochure no longer becomes priority, even though we paid before the other clients did. IP&R admits unsatisfactory performance, and yet Mr. Carley applauds unsatisfactory performance and breach of contract by deeming breach of contract and unsatisfactory performance as acceptable. Mr. Carley cannot be impartial while making judgments like this.

Why Mr. Carley did not mention anything about Mr. Flores continual leading of witnesses in the trial? In blatant disregard for the oath that Mr. Newberry was under, Mr. Flores led the witness, pointing to the contract in an effort to get him to say what Mr. Flores wanted to hear. Mr. Flores was leading the

witnesses quite clearly throughout the Hearing, but Mr. Carley only rebuked him when it was significantly obvious. In addition, Mr. Flores kept asking questions and expecting certain answers, but the witnesses were giving them the wrong answers, and even Mr. Flores said that he was learning something new. How Mr. Carley, could see that Mr. Flores was leading the witnesses, and not bring that up as part of his judgment process is again egregious.

Why Mr. Carley has errors of fact in his own award letter? It is our conclusion that Mr. Carley did not bother to review our material in a manner worthy of his position and in consideration of the amount of time that we put into preparing for this. As Mr. Flores so sarcastically and unprofessionally points out to us in his final brief, that certain points should be obvious to us, as if we are supposed to read our product managers mind. It should be obvious to Mr. Carley, given the amount of information and evidence, that we expect it to be thoroughly reviewed. It is a privilege for Mr. Carley to be called on to be an arbitrator for our case, especially because we chose him.

With that, Mr. Carley improperly claims and states in the award letter that:

- IP&R went to at least four trade shows, but the monthly reports document only three trade shows were attended. We have documentation stating that they were supposed to go to five, putting aside the 10 or 12 that Mr. Stickel told us, but for some reason IP&R change their mind.
- IP&R made over 50 industry contacts. Although Mr. Flores claims that they made 56 contacts, he too is incorrect. Mr. Carley mentioned this in the award letter. Table 1 is a compilation of all of the leads that IP&R followed up on. As can be seen, these “leads” cannot be converted into “contacts” for a plethora of reasons.

Table 1

Company	Description	First Contact	Follow-up?	Closed?	How Ended?
Score It Sports		No contact in monthly reports.			
Americazz Sports & Performance	Sports & Promotion	December	Yes	Yes	Contact passed.
Nike, Inc.	Sporting Goods	December	Yes	No	Never gave us the NDA or POT they got from Nike.
Solar Link Intl, Inc.	Manufactures Shoes for New Balance.	January	No	No	Never followed up.
Tanel 360	They make special cleats for baseball, soccer.	January	No	No	Never followed up.
Dick's Sporting Goods	They are a retailer.	January	N/A	Yes	Never replied.

Company	Description	First Contact	Follow-up?	Closed?	How Ended?
Wolverine Sports	Sports Promotion / Distributor	January	N/A	Yes	Never replied.
Pepco Poms	They make cheerleading pom poms.	January	N/A	Yes	Don't make tennis products.
Escalade, Inc.	Manufacture / Distribute sport products for table tennis, et al, but not for tennis.	January	N/A	Yes	Don't make tennis products.
Markwort Sporting Goods Company	Distribute Sporting Goods.	January	N/A	Yes	Don't make tennis products.
AbsolutelyNew Retail	Evaluate products and manufacture them.	February	N/A	Yes	Apparently promotes specifically to QVC. Not really a contact because it is the same company.
3-D Multi Dimensional Marketing	Sports Corporate Apparel and Promotion	February	N/A	Yes	Contact states they feel PK is unnecessary.
Apple Rise Sports	Sell Snow Ski items mainly.	March	N/A	Yes	Contact says not a good fit for them.
Evans Manufacturing Inc.	Bringing new and innovative products to the industry. Promotional.	March	Yes	Yes	Not a good fit.
Gamma Sports	Manufacture / Distribute Sports products.	March	N/A	Yes	Does not need it.
Penn Racquet Sports	Manufacture Tennis and Golf Balls only.	March	N/A	Yes	Contact says not a good fit for them.
Jaypro Sports	Manufacture Sport Equipment.	March	N/A	Yes	Never replied. They make tennis nets.
Alpha Sports	Makes tennis products.	April	Yes	Yes	Contact passed.
Olympia Sports	Philadelphia's #1 sneaker store, is dedicated to providing a wide range of athletic footwear and apparel at affordable prices for the entire family.	April	N/A	Yes	Company is a retailer of shoes.
Adidas America	Sporting Goods	April	N/A	Yes	Company has internal R&D.
Tennis Warehouse	Retailer	April	N/A	Yes	They sell, not manufacture.
Gosen America	They distribute tennis rackets and string.	April	N/A	Yes	Product is made in Japan.

Company	Description	First Contact	Follow-up?	Closed?	How Ended?
Forten	Manufacturer of Tennis Products	April	N/A	Yes	Company has internal R&D.
PowerAngle	Manufacture Tennis Rackets	April	No	No	Never followed up.
Kirschbaum		No contact in monthly reports.			
Outdoor Fun Store	Outdoor Fun Store sells, installs and services outdoor fun items.	April	N/A	Yes	Never replied.
Douglas Industries	Manufacture Sport Nets and Equipment	April	N/A	Yes	Never replied.
Axis International	Manufacture & Distribute products	May	N/A	Yes	Stated that they want a manufactured product. ??
Illini	Promotional products	May	N/A	Yes	Contact passed.
First Street Online	Sell Innovation & Technology Gadgets	May	N/A	Yes	Not a good fit. They don't sell sports products.
Diadora America	Manufacture Sporting Equipment	May	No	No	Never followed up.
Wilson Sporting Goods	Sporting Goods	May	Yes	Yes	Not a fit right now.
Head USA	Head NV is a leading global manufacturer and marketer of premium sports equipment.	May	N/A	No	IP&R could not locate company and gave up.
Jester Promotions	Sell Promotional Products	May	N/A	Yes	Contact passed.
Tennis-Tennis	No information found.	May	N/A	No	They are not a manufacturer.
Specialized Promotions	Novel ideas and cost effective ways to promote your business.	June	Yes	No	Never replied.
SAM North America (Master Sports)	Manufacture tennis ball and stringing machines	June	No	No	Not a good fit. Company designs their own products in general.
Prince Sports Group	Manufacture Tennis Products	June	N/A	Yes	Never replied.
Lobster Sports	Manufacture Tennis Ball Machines	June	N/A	Yes	Never replied.

Company	Description	First Contact	Follow-up?	Closed?	How Ended?
Crown Products	Recognized leader in the promotional products industry.	June	N/A	Yes	Never replied.
Quickey Manufacturing	Promotional Products	No	N/A	Yes	Contact Passed.
Vantage Products Intl	Manufacturer, importer & distributor of sports nets & team sports equipment.	June	Yes	Yes	Never replied.
Fischer Skis	Manufacture Ski and Tennis Products	July	Yes	No	Never replied.
Franklin Sports	Manufacture Sports Products	July	Yes	No	Received NDA documents. Contract over.
Promotions Factory Direct	Promotional Products	July	Yes	Yes	Contact passed.
BSN Sports	Sports Retailer	July	Yes	No	Contact says they are interested but nothing was made an action item. Contract over.
PromoPros	Promotional Products	July	Yes	No	Waiting on contact. Contract over.
Absorbent	Promotional Products	July	Yes	No	Waiting on contact. Contract over.
Tennis Gifts	Unique Tennis Products	August	N/A	No	Never replied.
Advantage Tennis Supply	Manufactures and distributes tennis court equipment and related products	August	N/A	Yes	Contact passed.
Volkl Sport America	Manufacture Sport Products	August	N/A	No	No reply. Contract over.
BPI International	Manufacture Sport Products	August	N/A	Yes	Contact not interested in IP&R's products.
Fromuth Tennis	Online Wholesale Sports Distribution	August	N/A	Yes	Only make rackets. Do not want accessories.
Yonex	Manufacture Sport Products	August	N/A	No	Contract over.
Balls and More Athletics	One stop web site for all your athletic needs.	August	N/A	No	Contract over.
Total Tennis	Tennis Camp and Store	August	N/A	Yes	Contact is not a manufacturer.

According to the dictionary, "contact" is "Connection or interaction; communication." There are not 56 contacts in Table 1. A "lead" is "An indication of potential opportunity; a tip." IP&R started out with 56 Leads. These Leads then have to be converted into Contacts. If a Lead made no reply, then it cannot be

considered a Contact. Furthermore, Leads that are unrelated to sports, (specifically tennis,) are not a manufacturer, do not make tennis products, do not make tennis accessories, are not nor ever will be a "potential acquirer" and therefore can never be a Contact.

With this clarification, Table 1 can be reviewed to obtain how many true Contacts there really were. Of the total of 56 claimed Contacts, 2 were never called, 2 sent IP&R an NDA and/or POT but were never forwarded to us which will be considered a non-follow-up, 4 were never followed up on, 12 never replied and may or may not have been a "potential acquirer" as noted above, 15 would not be considered a "potential acquirer," labeling AbsolutelyNew Retail as a Contact is not justified, and 7 were left open at the end of the contract and may or may not have been a "potential acquirer." 14 are considered "Contacts" and with the 7 left open, the remainder is 21. Out of the 56 claimed contacts, only 21 are viable. The most unacceptable part of this is that the product managers did not perform enough research into the companies before they called them. If 10 leads are acquired, and 5 are called but found to be unrelated or never reply, then we really are not getting what we paid for.

- "...the parties' agreement to continue to the six month contract for three months in order to address Claimants concerns regarding time lost due to the brief delays." The three-month extension "... does appear to mitigate against finding Respondent in breach of the agreement." Zack Gideon wrote Jeff Newberry, as shown in Exhibit 33, Page 3. Exhibit 33 is from Mr. Flores discovery sent to us, which I sent back to him in our final exhibit package. In this e-mail, dated December 19, 2005, Zack suggests that they extend us an extra month. Now, although his basis for this was because I incorrectly quoted the effective date as October 28, the fact is that the report was still a month late. Zack initiated this himself. In addition, we asked for a contract over and over because were told we were going to get an extension, but it was never put in writing. The agreement to continue was acceptable on the terms that Jeff Newberry would contact certain people and go to trade shows during this term. Although Exhibit 34, Pages 1-2 mentioned this conversation stating that we were pleased at the extension promises and the current progress, the reality is that nothing really changed, and Jeff Newberry did not contact anyone or attend any tradeshow that we know of. In fact, that same call entry states that the three months was making up for the months that we were unhappy with their performance. But what nobody mentioned was that the prime time, in reality, and according to literature sent to us in Exhibit 13, the Spring is the most important time for trade shows and making contacts. I told Mr. Newberry that the best time was in the Spring (which includes from January on until April) according to my experience, and that they said it was in the Spring also, but he said yes, but no, people licensed products in the Summer also. I said we were being deprived of the prime time for marketing our products, and this does not make up for that prime time. This is another reason why we are in arbitration. Figure 2 below shows the e-mail:

Figure 2

Subject : FWD: Contractual Issues
Date : Mon, 19 Dec 2005 14:53:00 -0800
Linked to : Randall Berens (Randall Scott Berens)
From : ZACKG <GoldMine User>
To : JEFF (jeff n) <GoldMine User>

Hi Jeff,

I already spoke with Scott, and he is aware of the timelines for the deliverables. I told him that we will call back very shortly with an exact date for the research to arrive. The 2nd round brochure, with all his changes was sent out today (12/19). The research is delayed because that department is backed up. Let me know if you want to have a conference call, or if you need any other information regarding this. I was thinking we could extend his contract one month, because it has taken over 52 days (October 28th was contract date according to him) to get the research to him.

Thanks,
 Zack

- "...both deliverables were late and contained errors...." The fact is that both deliverables were late, but it was the brochure that had the errors. The research report was simply useless and full of industry information that had nothing to do with tennis except for one paragraph.
- "...some evidence was presented during the Hearing that suggests that some of the errors were caused by Claimants." IP&R made the errors on the brochures they kept sending to us. I modified the brochure and incorrectly spelled a word, and mistakenly blamed it on IP&R. IP&R figured that out rather quickly, and it did not affect anything at all. That was the only mistake on our part; otherwise all of our changes had no errors whatsoever. I had to keep pointing out their errors. Mr. Carley does not have his facts straight, even though I explained it to him thoroughly in the final brief. The brochure error submitted to us were IP&R's fault, not ours.
- "...it appears that they substantially complied with all material contract terms." "...the evidence presented supports a finding that the Respondent did satisfy the minimum contract requirements." When we hired IP&R, we did not pay for a "substantial" or "minimal" amount of the contract to be performed. Legally the minimum may be acceptable, but in order to achieve the minimum, the performance has to be almost ineffective. We proved that IP&R accepts that their performance was unsatisfactory, and yet our claims and evidence were not considered by Mr. Carley.
- "The weight of the evidence presented at the Hearing suggests that the delay did not have a material impact on Respondents marketing efforts or in any way prejudiced Claimants. This was because Respondent had received a completed product, which it could -- and apparently did -- bring to the trade shows. Thus, I do not find that the brief delay in the delivery of these documents represent a material breach of the Marketing Agreement." It seems that Mr. Carley did not have a good understanding of all that went on during this campaign. It is obvious that Mr. Carley was partial to IP&R in weighing the evidence to their side, which was enhanced even further because the witnesses were not speaking the truth. We received a three-month extension because of the poor performance from January through April, which includes the research report and the brochure that were not ready for the trade shows. The contract states that the marketing research report serves as a basis for the campaign. Therefore, no matter what IP&R states or Mr. Carley interprets, this is what is in the contract. If the research

report is so important as to be the "roadmap" according to Jeff Newberry, then how can they possibly properly begin the campaign if the "roadmap" was not ready? IP&R may say that they have done this before and it is easy for them to get started. But we expect them to adhere to the contract, and since we have no documentation of the process that they use, we expected to see a marketing research report on time. A breach of contract and the impact on the campaign are two different things. We were told, and their documentation states, that they need the last few months of the year to prepare for the beginning of the New Year trade shows. The fact that IP&R was so backed up in the art department and in doing the research report supports that they were getting a lot of clients who were told the unfortunate same thing as us, and IP&R took on more clients than they could handle. Mr. Carley did not take these things into consideration, and again does not appear to have been impartial.

Discussion

Mr. Carley failed to provide an impartial ruling in this matter. Clearly IP&R were in breach of contract. We displayed that they were late, that it affected our campaign at the most critical time, and how not attending all of the trade shows affected our campaign. We did not receive the campaign that IP&R claims that they provide. No contract is going to state all of the great things about the company; rather, they will word the contract to protect themselves and not the customer. This has been the case in this matter. Mr. Carley is familiar with false advertising, and yet when it is right before his eyes he ignored it.

The arbitrator cannot make a ruling based on the "...appearance that IP&R substantially complied with the deliverables of the contract." IP&R was obligated in their contract to continue working with us, but they were late, and unresponsive. Mr. Carley also suggests that some of the errors were caused by us. I blamed one error on IP&R, which was my mistake, and I admitted it, but that was my error that they never used. What about the many errors that they sent us? Mr. Carley took that one "error" in correcting their poor efforts, and injected it into his ruling while ignoring the depths of evidence of the failure of IP&R's performance and knowingly fraudulent actions in order to get us to sign the contract. The issue is not that I made the error, but rather that I mistakenly blamed it on them.

Rule 17 of the commercial arbitration rules of the AAA is seen below. We see that the arbitrator should not be using partiality. All throughout the award letter Mr. Carley's fingerprint of partiality is visible. The nomenclature of the words that Mr. Carley uses is indicative of someone punishing another and looking for reasons to acquit the Defendant. We see that Mr. Carley admits as to having a potential relationship with AbsolutelyNew in the past. Working in the same locale and industry as IP&R, there is potential that Mr. Carley may work for them in the future. When we found out this connection, we did not believe that posed a concern. However, viewing the award, we see that there are obvious indicators as mentioned previously, that partiality and bias towards IP&R was made. Although this was not palpable previous to the award letter, it is quite clear now, as a fingerprint is on a window. We believe that the close proximity and potential ramifications that Mr. Carley thought of if he made a judgment against IP&R was considered in his ruling.

(a) Any arbitrator shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for

(i) partiality or lack of independence,

(ii) inability or refusal to perform his or her duties with diligence and in good faith, and

(iii) any grounds for disqualification provided by applicable law. The parties may agree in writing, however, that arbitrators directly appointed by a party pursuant to Section R-12 shall be nonneutral, in which case such arbitrators need not be impartial or independent and shall not be subject to disqualification for partiality or lack of independence.

(b) Upon objection of a party to the continued service of an arbitrator, or on its own initiative, the AAA shall determine whether the arbitrator should be disqualified under the grounds set out above, and shall inform the parties of its decision, which decision shall be conclusive.

Rule 18 below, is a concern that we have in regards to communication with the arbitrator. IP&R is the company we paid, but AbsolutelyNew is the company that actually did the work. AbsolutelyNew did contact Mr. Carley. I take it that Mr. Carley accepted Mr. Flores word that it was just a coincidence, yet when I testified, Mr. Carley said nothing was written to prove what I said in testimony. Thus, Mr. Carley deems my testimony worthless, and I am the only one who had time to testify for us. We again see bias by Mr. Carley in favor of IP&R. It was also seen that Mr. Flores directly responded to Mr. Carley in an e-mail, however, Mr. Carley did not take that into consideration.

R-18. Communication with Arbitrator

(a) No party and no one acting on behalf of any party shall communicate ex parte with an arbitrator or a candidate for arbitrator concerning the arbitration, except that a party, or someone acting on behalf of a party, may communicate ex parte with a candidate for direct appointment pursuant to Section R-12 in order to advise the candidate of the general nature of the controversy and of the anticipated proceedings and to discuss the candidate's qualifications, availability, or independence in relation to the parties or to discuss the suitability of candidates for selection as a third arbitrator where the parties or party-designated arbitrators are to participate in that selection.

(b) Section R-18(a) does not apply to arbitrators directly appointed by the parties who, pursuant to Section R-17(a), the parties have agreed in writing are non-neutral. Where the parties have so agreed under Section R-17(a), the AAA shall as an administrative practice suggest to the parties that they agree further that Section R-18(a) should nonetheless apply prospectively.

Summary

Our complaints are spelled out in the paragraphs above. To summarize, we contend that Mr. Carley used poor judgment. With that is the following.

Mr. Carley:

1. Did not properly consider our evidence.
2. Showed partiality in favor of IP&R.
3. Has reasons for withholding a judgment against IP&R, including retaliation, potential future employment, social reasons being within the same locale, and the need to somehow chastise us as evident in the tone of the award letter.

4. Writes that IP&R did not breach their contract, when clearly testimony shows that IP&R were late on their deliverables and a three month extension does not extinguish a breach of contract.
5. Falsely relied entirely on the contract in light of everything submitted as evidence and adjacent with item (1) above.
6. Addressed IP&R's claims, but does not offer up our testimony as truth.
7. Did not apply the American Inventors Protection Act of 1999.

Conclusion

Mr. Flores showed up late to the Hearing three times. He turned in his final brief five hours late, not paying attention to the letter sent to the parties regarding the due date and the due time. Over and over we see these flaws in IP&R, and yet somehow, we are supposed to accept Mr. Carley's ruling with obvious partiality. We are not insinuating criminal activity by Mr. Carley; we are simply stating that something is wrong with this award and the reasoning behind the ruling. We have been damaged by IP&R, and now we have been damaged by the AAA ruling. Why would we have gone through all of this trouble? Many others have received their money back, and/or a partial reward. We denied a partial award from IP&R for three reasons: 1) considering the performance of IP&R in their deceitfulness and false claims, we wanted all of our money back, plus for damages in time and stress and anxiety, and 2) we knew that we would be under a gag order if we accepted money from IP&R, and 3) we wanted to be able to warn others to stay away from IP&R.

Our evidence could not be any more convincing. However, the falsehoods of both IP&R's testimony and Mr. Flores final brief clearly were used to explain away our evidence. Even Mr. Flores went so far as to question my faculties, and claimed I have "creative memories" and "unrealistic expectations." Mr. Flores was critical of our final brief, but what about his insinuations?

The action we require is for the AAA to review this ruling in light of the failure by Mr. Carley to apply the American Inventors Protection Act of 1999, (in that alone), errors in the award letter, falsehoods in Mr. Flores final brief, and partiality shown towards IP&R. We believe that the award is not in line with the evidence that we presented, and that the contract cannot be the sole basis to determine if IP&R performed adequately. Mr. Carley rejected their claim for the remaining balance. However, Mr. Flores stated that they were not going to counterclaim, and in the minimum of fairness, it should have been rejected. So we in essence, spent roughly \$2500 related to arbitration, and in return received partiality and a slap on the wrist to IP&R with a green light to continue preying on uninformed inventors such as we were. Mr. Carley in a partial manner, weighed all of our evidence, but kept the contract. Yet somehow, inventors are only supposed to rely on the contract according to Mr. Carley, but are lured in by false promises, and false advertising. Continually throughout the award letter, Mr. Carley uses the word, "appear." While we have proven evidence documented, it does not matter to Mr. Carley. He believes the "appearance" is what is most important. We will not stop following up on this ruling, just as we were "taken" by IP&R when they admittedly did not perform, the AAA did not perform and has "taken" us.

Currently, the AAA is obligated to respond as to how they intend to handle this in light of the improper dismissal of the Act.

I have further detailed rebuttal to Mr. Flores final brief available.

I look forward to this review and Hearing from all parties including AAA.

Regards,

Scott Berens,
Managing Partner,
Power Key Company