

# DAILY BUSINESS REVIEW

## VERDICTS & SETTLEMENTS

# Defense gets judgment cut to fraction of \$3 million suit

**Case:** RGF Environmental Group v. activTek Environmental Corporation, et al.

**Case no:** 9:2008-cv-80682

**Description:** Copyright infringement

**Filing date:** June 20, 2008

**Trial dates:** July 27-July 30, 2009

**Final judgment:** Jan. 29, 2010

**Judge:** U.S. District Judge William P. Dimitrouleas

**Award:** \$34,575

**Plaintiff attorneys:** Temple Fett Kearns, Gary Marc Bagliebter and Joseph Englander, Shutts & Bowen, Fort Lauderdale

**Defense attorneys:** Glen H. Waldman and Eleanor Trotman Barnett, Heller Waldman, Miami

**Details:** EcoQuest International, a healthy lifestyle company, sought to enter the commercial air filtration market with its subsidiary, activTek and turned to manufacturer RGF Environmental Group. The company already had developed the market for air purification systems used in warehouses and other large commercial buildings.

West Palm Beach-based RGF agreed to sell two pending trademarks, invention records and product designs to EcoQuest in 2004. The company also agreed RGF would offer certification courses and how-to booklets for the devices. EcoQuest would pay RGF royalties each time a booklet was sold or a course taught.

But EcoQuest stopped paying royalties after a few months. RGF filed a lawsuit claiming EcoQuest had infringed on its copyrights.

**Plaintiff case:** RGF attorneys argued EcoQuest, its subsidiaries and CEO Michael Jackson willfully infringed upon RGF's copyrights by distributing booklets without paying royalties, pointing to an asset purchase agreement from 2004. RGF also claimed



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**Eleanor Trotman Barnett and Glen H. Waldman of Miami's Heller Waldman law firm successfully got a \$3 million request whittled to less than \$35,000.**

EcoQuest secretly reverse-engineered an RGF filtration system, built its own version using RGF's product name and made millions of dollars.

The company claimed EcoQuest used RGF to enter the market, then tossed the company aside once it was no longer needed. But EcoQuest kept using the names of RGF products such as a Turbozone, Turbozone 7000 and BOS.

When listing defendants, RGF attorneys lumped together several companies related to EcoQuest. Fett Kearns said all were related and benefited from the copyright infringement.

RGF attorneys claimed EcoQuest's attorneys severely delayed discov-

ery, forcing RGF to go to a bench trial without proof of damages. RGF attorneys switched gears, instead seeking injunctions to at least ensure EcoQuest could no longer profit from RGF designs.

**Defense case:** EcoQuest attorneys denied copyright infringement and contested the validity of the asset purchase agreement RGF submitted as evidence. They also claimed the RGF booklet was no longer in use.

"We were also emphasizing there was no willful infringement and no proof of the damages they were entitled to. They didn't have a damage expert, which was critical," Waldman said.

The attorneys also distinguished

between the many companies involved in the lawsuit, laying the groundwork for settlements between each company and RGF.

**Outcome:** The judge granted summary judgment in favor of RGF, finding EcoQuest infringed on the Turbozone marks — but not willfully. He found Jackson was not personally liable.

Several EcoQuest companies settled with RGF on some portions of the lawsuit, including allegations of breach of contract and deceptive and unfair trade practices for a total of about \$55,000.

On the remaining allegations, Dimitrouleas ruled activTek infringed on RGF's copyright to the booklet and placed an injunction preventing Jackson and activTek from continuing to do so. The judge found defendants did not infringe trademarks for the BOS device because they only sold the product but didn't produce their own version.

While RGF requested \$3 million in damages, the judge found RGF failed to prove it was entitled to damages based on claims of lost profits. RGF was awarded \$22,947 for the Turbozone trademark infringement and \$11,628 for the booklet's copyright infringement.

**Quote:** "We had some very limited damages we actually acknowledged. Our goal going in was to limit the awards," Waldman said. "There weren't any damages because there weren't any profits because we weren't making them anymore."

**Post-decision:** RGF is seeking to alter the final judgement, claiming the dollar award is duplicative based on the settlements. The defense also is seeking attorney fees in excess of \$293,000 for representing Jackson, who was not found personally liable.