

# Client Alert

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## **In *Mission Product Holdings*, Supreme Court Decides That Trademark Licensee's Rights Are Not Revoked by Licensor's Rejection of a Trademark License in Bankruptcy**

Yesterday, in *Mission Product Holdings v. Tempnology LLC*, the Supreme Court held that a trademark licensee may continue using a licensed trademark after its licensor files for bankruptcy and rejects the relevant license agreement. While a debtor-licensor may "reject" a trademark license agreement under Section 365 of the Bankruptcy Code, such rejection is only a breach of the agreement and does not allow the licensor to revoke the licensee's rights.

Mission Product Holdings thus resolves a longstanding uncertainty regarding whether a debtor-licensor could unilaterally prevent a licensee's continued use of a licensed trademark by rejecting the license in bankruptcy. Congress enacted the Intellectual Property Licenses in Bankruptcy Act (11 U.S.C. § 365(n)) over 30 years ago to address this issue for patents (and other intellectual property), in the wake of *Lubrizol Enterprises, Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043 (4th Cir. 1985), in which a debtor-licensor was allowed to revoke a patent license in bankruptcy. But, while § 365(n) provides an exception to protect patent licensees, and certain other licensees in a similar situation, it explicitly excludes trademark licensees, due in part to the trademark law requirement that a licensor ensure sufficient quality control over licensed use of a mark.

The Court addressed that issue head-on, first expressly rejecting the argument that because trademark licenses were not included in the exception provided by § 365(n), trademark licensees could not receive similar protections, and then concluding that the effects of a breach caused by the rejection of a trademark license are the same as the effects of a breach outside of bankruptcy.

This is an important opinion because it is now clear that a trademark licensee has the right to continued use of a licensed mark following a rejection in bankruptcy, just as it would in a non-bankruptcy breach of agreement.

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