



Judicial Orders Regulating Use of “AI”



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F60



AI-Assisted Research

How the AI works

Tips for best results



Prompt: Find a decision by Judge Jane Janes in the District of Arizona in which she addresses whether suing the wrong party violates federal rule of civil procedure 11.

- The search results do not provide a specific decision by Judge Janes of the District of Arizona addressing whether suing the wrong party violates Federal Rule of Civil Procedure 11. Nevertheless, a review of available cases does shed some light on related issues.
- In *Newman v. University of Arizona*, a decision by Judge Janes in a different case, *Nokes v. Arizona State*, was mentioned [1]. In this case, she disagreed with the notion that violating a local rule would warrant the striking of a document, asserting that the Federal Rules of Civil Procedure do not offer a mechanism for striking documents other than pleadings [1]. This suggests that Judge Janes might not view procedural errors as necessarily warranting severe consequences, although it does not directly address the issue of suing the wrong party.
- Without a direct ruling by Judge Janes on the specific issue of whether suing the wrong party violates Federal Rule of Civil Procedure 11, it is unclear how he would rule on such a matter.
- Was this response helpful?



Hypothetical Trademark Case

- Slush Puppie UK licenses rights to use SLUSH PUPPIE trademarks from ICEE.
- Parties' agmnts make clear that SPUK doesn't have exclusive rights in UK or Europe.
- Between 2009 and 2018, owner of SPUK, Mark Peters, argues that his father Ralph had an oral understanding of exclusivity from ICEE.
- ICEE is not convinced, so in 2017, Peters "finds" among his father's papers in a Majorca house a license agmnt that provides exclusivity, signed by his father & ICEE's predecessor dating from 2000.



What claims are available by ICEE
against SPUK?



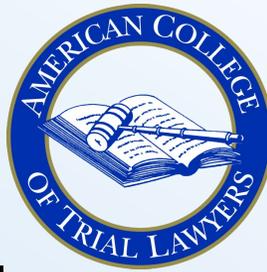
ChatGPT

Based on the provided fact pattern, ICEE (the defendant) could potentially assert several legal claims against SPL and its owner, Mark Peters. Here are some potential claims:

1. **Fraud:** ICEE could assert a claim of fraud against SPL and Mark Peters based on their alleged scheme to obtain broad, exclusive rights via forgery and litigation. This includes fabricating documents, such as the forged 2000 Appointment, and using them to continue using ICEE's SLUSH PUPPIE trademarks illegally.
2. **Breach of Contract:** ICEE could argue that SPL and Mark Peters breached the parties' governing agreements (the 1999 Manufacturing Appointment and the 1999 Distributor Agreement) by engaging in fraudulent activities to obtain broader rights than those agreed upon.
3. **Breach of Fiduciary Duty:** ICEE could assert that SPL and Mark Peters breached their fiduciary duty by engaging in fraudulent activities that harmed ICEE's intellectual property rights and business interests.



4. **Conversion:** ICEE might have a claim for conversion if SPL and Mark Peters used ICEE's intellectual property without authorization, thereby depriving ICEE of its rights to control and benefit from its property.
5. **Defamation:** If there are false statements made by SPL or Mark Peters that damage ICEE's reputation or business, ICEE could potentially assert a claim for defamation.
6. **Civil Conspiracy:** ICEE may argue that SPL and Mark Peters conspired to commit fraudulent acts and deceive ICEE, which resulted in harm to ICEE's business interests.
7. **Unfair Competition:** ICEE could claim that SPL's actions constitute unfair competition by engaging in deceptive practices to gain an advantage in the market.



- Attest that no portion of any filing was *drafted* by generative AI, or attest that it was checked for accuracy using print reports or “traditional legal databases” by a human being. --*Judge Bradley Starr, ND Texas.*
- If generative AI was *used for research* or to draft, disclose what AI tool was used and *how*. --*Judge J. Gabriel Fuentes, N.D. II.*
- If text was drafted “with the assistance” of generative AI, ID the program & *which portions have been so drafted* & certify no disclosure of confidential business or proprietary info. – *Judge Stephen Vaden, Ct. Int’l Trade.*
- If “AI” was used “in the preparation” of any filing, disclose use & certify that each citation to the law or the record has been verified as accurate. --*Judge Michael Baylson, E.D. Pa.*
- No “AI” may be used “in the preparation of any filing,” but the ban doesn’t apply to “info gathered from legal search engines, such as Westlaw or LexisNexis, or Internet search engines, such as Google or Bing.” Duty to inform court of discovery of “use of AI in any document.” Subject to sanctions including contempt. --*Judge Michael J. Newman, S. D. Ohio.*



- Party using AI “in the preparation of materials submitted to the court must disclose in the filing that an AI tool was used to conduct legal research &/or was used in any way in the preparation of the submitted document.” Rule 11(b) applies. -- *Mag J. Jeffrey Cole, N.D. II.*
- Submission containing “AI-generated content must include certification that *lead trial counsel has personally verified* the content’s accuracy.” *Hon. Araceli Martinez-Olguin, N.D. Cal.:*
- Anyone using AI “in connection w/ the filing” of any paper or discovery request or response must comply w/ Rules 11(b) & 26(g). *Citing Maura Grossman, Paul W. Grimm & Daniel G. Brown, Is Disclosure & Certification of the Use of Generative AI Really Necessary? --Judge Iain Johnston, N.D. II.*



Using AI to Develop Cross Exam Questions: Is It Ready for Prime Time?



2011 History of Working Practise

Signed by Will Radcliff

Date

 2/22/11

in the presence of

 2/22/11

Forged 2000 Appointment

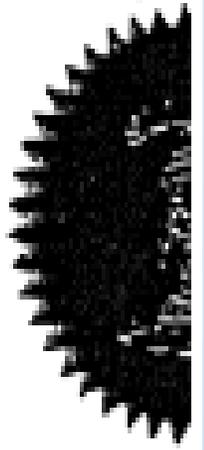
Signed and executed SLUSH PUPPIE CORPORATION Cincinnati, Ohio, this

Day of August 2000

By: 

WITNESSED BY:







File: Hisoty of Working Practice.pdf

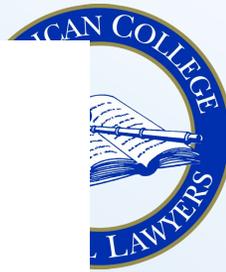
Title: Microsoft Word - Will RPP history of SP USA Contrat V1.1

Author: markp

Subject:

Keywords:

Created: 11/20/2017 3:31:42 PM



From: Lindsay Kirby [<mailto:lindsay.kirby@slushpupple.co.uk>]

Sent: Wednesday, November 12, 2008 10:57 AM

To: Bird, Jerry

Subject: Royalty 2007

Dear Jerry,

The royalty is calculated as defined in the Trade Mark Licence dated August 8, 2000.

On page two - A. Royalty shall be defined as an amount proportionately equal to 2.5% of the total cost of SYRUPS in pound sterling prices charged to and sold to distributors after all appropriate discounts (for all other goods and services sold directly to retailers by SPL there will be no royalty payable) in the Territory. Royalty shall be calculated and paid without regard to the tax implications, if any, to Manufacturer.

Is this what you need?

Regards,
Lindsay



Email Metadata	File Metadata	Document Metadata
File Type:	Contains Embedded Files:	
Document Extension: PDF	Has Hidden Data:	
File Size: 570259.00	Has OCR Text:	
Date Created: 1/17/2018 9:53 AM	Speaker Notes:	
Date Last Modified: 1/17/2018 9:53 AM	Track Changes:	
Last Accessed Date/Time:	Unprocessable:	
SHA1 Hash:	Source Path:	

Edit

Document Metadata ▼

Record Information

Control Number:	SP005978	Control Number End Attach:
Record Type:		Primary language:
Media Type:		Processing Folder Path:
Level:		Container name:
Unified Title:		Container ID:
Primary Sort Date/Time:		Container extension:

Email Metadata	File Metadata	Document Metadata
Title:	Microsoft Word - Document2	Last Printed Date/Time:
Author:	markp	Last Saved Date/Time:



D Workspace

New Chat

Examples

Sort by date + New

- Past 7 Days
- Document Summarizat...
- Past 30 Days
- Cross-Examination Qu...
- Drafting Legal Docume...
- Document Upload Con...
- Document Upload Con...
- Chronology Creation In...

NEW CHAT

Hi David!

What would you like to do today?

Search a Database
Search my own database for specific information.

Review
Pinpoint key information in documents, contracts, or databases.

Draft
Write questions, contract outlines, or correspondence.

Summarize
Condense critical information in any kind of document.

What else can you do?

Give me examples

What would you like to do today? ➤

⊕ Upload

✓ Your data is private and secure. [Learn More >](#)

First, which of these best describes what you need to do?

- Search a Database**
Search my own database for specific information.
- Review**
Pinpoint key information in documents, contracts, or databases.
- Draft**
Write questions, contract outlines, or correspondence.
- Summarize**
Condense critical information in any kind of document.



To assist you with drafting cross-examination questions, I'll need some context regarding the witness you intend to cross-examine, as well as the topics or facts that you are aiming to challenge or bring to light. If you have a specific area of the witness's testimony or a topic you believe is crucial for the cross-examination, please share those details with me.

Once you provide this information, I can create a form for you to fill in so that we can generate a list of potential cross-examination questions tailored to your needs.



1. Is it your testimony that you took no part in altering, modifying, or creating any part of the 2000 agreement?
2. Mr. Peters, concerning the process of creating legal documents like the 2000 agreement, do you typically utilize any specific software or tools?
3. Have you ever used Adobe PDF or similar software to edit or modify document signatures?
4. On any occasion, have you extracted signatures from one document to use in another without the signatory's direct authorization?
5. In your communications, have you repeatedly spelled 'Wednesday' incorrectly as 'Wendsday'?
6. Given that 'Wendsday' is not a common misspelling, why does it seem to recur in your communications?
7. When questioned about the authenticity of the 2000 agreement, your responses varied significantly throughout your depositions. Why is that?
8. Mr. Peters, is it common for you to not recall specific details about important documents and communications you were involved in?
9. How do you reconcile your dyslexia claim with your professional responsibility for accurately creating and maintaining legal documents?
10. Mr. Peters, if discrepancies or forgeries are discovered and linked to the 2000 agreement, what implications would that have for the credibility of your testimony in this case?

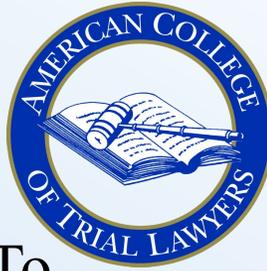


Prompt: This is great for examining Mr. Peters, who is the owner of the plaintiff, but now could you do a line of cross exam questions on the same issues but addressing the lawyers who have represented Mr. Peters. You should base the questions both on the three depositions of Mark Peters and the depositions of the attorneys.

Co-Counsel Response: Certainly. Here are the tailored cross-examination questions for the attorneys representing Mark Peters, regarding the alleged forgery of documents and their representations about the 2000 agreement:



1. As attorneys for Mark Peters, was there ever a point at which you advised your client on the potential legal repercussions of proceeding with a possibly forged agreement?
2. After concerns about the authenticity of the 2000 agreement were raised, did your legal team make any statements to the court or opposing counsel regarding these concerns?
3. Upon discovering the 2000 agreement, what steps did you take to verify its authenticity?
4. How did you address concerns or evidence suggesting the 2000 agreement could be forged?
5. Were you involved in any internal investigations within Slush Puppie Ltd. regarding the authenticity of the 2000 agreement?
6. How did you address the 'Wendsday' misspelling before or after it was raised in the depositions?
7. How do you explain the introduction of the 2000 agreement into evidence when there were clear signs of potential forgery?
8. How did you reconcile the decision to continue asserting the 2000 agreement as genuine in legal proceedings after handwriting experts raised questions about the signatures?



Prompt: Could you phrase the questions in a way that, regardless of whether the answer is yes, know, or i don't know, they would be helpful to ICEE's position? To be clear, ICEE's position is that the plaintiff's case should be dismissed with prejudice as a sanction for the forgery, and the attorneys should be sanctioned for aiding and abetting the use of the fraudulent documents and failing to preserve evidence about the forgeries.

Co-Counsel Response: Certainly, framing cross-examination questions to be advantageous to your position regardless of the response is a classic and effective legal strategy. Here are the cross-examination questions tailored in a way that benefits ICEE's position:



1. Is it true that despite potential questions surrounding the authenticity of the 2000 agreement, your legal team decided to proceed with using it in this case?
2. After learning of the 'Wendsday' misspelling that could infer questions of authenticity, what immediate actions did you take regarding use of the implicated documents in this case?
3. Upon discovering the misspelling of 'Wednesday' that is consequential to this case, was it disclosed to ICEE or the court at the earliest opportunity?
4. Having been made aware of potential forgeries, what ethical considerations did you discuss within your legal team regarding the continuation of the case?
5. As an officer of the court, do you agree that knowingly presenting forged documents in court proceedings could be grounds for case dismissal and potential attorney sanctions?
6. Can you explain how the failure to disclose doubts about the authenticity of a key document aligns with your duty to preserve the integrity of the legal process?
7. Is it common practice in your firm to use documents in litigation when there is expert evidence that calls into question their authenticity?



These questions are phrased to elicit responses that could demonstrate a lack of due diligence or ethical oversight by the plaintiff's attorneys, regardless of whether the answer is affirmative, negative, or uncertain. This approach can help reinforce ICEE's position regarding dismissal of the case and sanctions against the plaintiff's legal team.



AI as Evidence: Are the Federal Rules Up to the Task?



RELEVANCE

- Rule 401:
 - Is data or system being offered consistent w/ the purpose of the system—i.e., function creep?
 - What's problem system was designed to solve?
 - Is manner in which the AI operates explainable?
 - Has proponent offered to disclose underlying info re
 - training data and development,
 - operation of the system
 - algorithms
- Rule 104(a): Court decides preliminary questions about whether a witness is qualified, a privilege exists, or evidence is admissible.
 - Usual standard is preponderance, but is that fair/just in all circumstances?



UNFAIR PREJUDICE?

Rule 403: Probative value substantially outweighed by the danger of one or more of:

- unfair prejudice,
- confusing issues,
- misleading jury,
- undue delay,
- wasting time, or
- cumulativeness.

Harm to opposing party if system is inaccurate, invalid, biased?

- Black Box vs. Glass Box
- Bias of data, algorithm



AUTHENTICATION

- Rule 901(a): Is it what the proponent claims it to be?
- Rule 901(b): Testimony of witness w/ knowledge.
- Rule 901(b)(9): Evidence describing process or system & showing that it produces an accurate result.
- Rule 602: Does witness have personal knowledge?
 - About the data used to train the AI system—how collected & cleansed
 - About the features & weights chosen for the machine-learning algorithm; how the system was programmed?
 - About how the system was tested?
 - About how the system operates—how the tool was used & how the results were obtained?



EXPERT TESTIMONY

- RULE 702
- Has expert's technique been tested for reliability & validity?
 - Independently?
 - Is proponent insisting on trade secret/proprietary status?
- Subject to peer review & publication?
- What's the known error rate when applied?
- Is the technique subject to standards & controls
- Has technique been generally accepted in the technical community?