

Jenner & Block Attorneys Beat \$100M Federal Trademark Lawsuit Against ViacomCBS Over Its 'MTV Floribama Shore'

"This order grants summary judgment because the plaintiffs' showing of likelihood of confusion—an element of the plaintiffs' infringement claims—is not strong enough to meet the standard that applies to artistic works," U.S. District Judge Robert Hinkle ruled in the summary judgment order.

by Michael A. Mora

New York attorneys led a team of litigators representing a U.S. multinational mass media company who prevailed in federal court in Panama City, Florida, against trademark and First Amendment claims.

Jenner & Block New York managing partner Susan J. Kohlmann and partner Alison I. Stein represented ViacomCBS as lead attorneys in its trademark dispute with the regionally famous Flora-Bama Lounge, Package & Oyster Bar over the title of reality show "MTV Floribama Shore."

Geoffrey Lottenberg, a trademark law expert and

partner at Berger Singerman in Fort Lauderdale, said the decision reaffirms that creators of expressive works, including reality TV shows, have broad First Amendment rights. And this protects them from trademark infringement claims by others, particularly if they are in different lines of business than the defendant, he said.

"If it was a Flora-Bama bar suing another Flora-Bama bar, that would have been a clean-cut infringement case, and it would have been a winner," said Lottenberg, who is not involved in this matter. "But when you're a TV network, and there are First Amendment rights and



Susan J. Kohlmann, managing partner at Jenner & Block in New York.

Courtesy photo

artistic expression involved, the law tends to favor that over the commercial interests."

Troy Rafferty and Wesley Bowden are lead attorneys for the plaintiffs, including MGF Properties and Flora-

Bama Management LLC, who own the Flora-Bama Lounge. Rafferty and Bowden, who are also shareholders at the Levin Papantonio Rafferty Law Firm based in Pensacola, Florida, did not respond to a request seeking comment.

The Pensacola litigators asserted a claim for trademark infringement under the Lanham Act on behalf of the waterfront bar, which is located on the Gulf of Mexico at the state line between Florida and Alabama.

According to court documents, the bar is a staple in the area, and has hosted concerts, such as a CMT broadcast nationwide in 2014, “Kenny Chesney: Live from the Flora-Bama,” which attracted around 40,000 patrons.

After the second season of the MTV show, the plaintiffs filed their lawsuit and sought nearly \$100 million in damages and the disgorgement of profits from the series, according to court documents.

The MTV show, set in Panama City Beach, was about 100 miles east of the Flora-Bama bar. While the show’s executives repeatedly



Credit: MTV

Cast of the show MTV Floribama Shore.

encountered the bar’s name in Google searches, the court found that they did not intend to benefit from the plaintiffs’ goodwill.

And U.S. District Judge Robert L. Hinkle, who sits in the Northern District of Florida, applied the *Rogers* two-part test and exemption in part to reach his decision in which the plaintiffs’ showing would be “sufficient to withstand summary judgment in an ordinary case—a case not involving a junior user’s artistic expression.”

Now, Hinkle ruled in favor of the defendant in a summary judgment order while

dismissing the case with prejudice on the merits.

“This order grants summary judgment because the plaintiffs’ showing of likelihood of confusion—an element of the plaintiffs’ infringement claims—is not strong enough to meet the standard that applies to artistic works,” Hinkle ruled in the order. “This is so in part because the plaintiffs and defendants use the competing marks in substantially different settings.”

Kohlmann reacted to the summary judgment order by saying: “We’re delighted to help our client ViacomCBS protect its brand.”