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TOP VERDICTS

THE LARGEST AND MOST SIGNIFICANT VERDICTS
AND APPELLATE REVERSALS IN CALIFORNIA IN 2023

Pacific Surf Designs Inc. v. Whitewater West Industries Ltd.

Rivals in the surfing simulator business, WhiteWater West Industries Ltd. and Pacific Surf Designs Inc., make machines that replicate the experience of ocean waves by pumping a thin, powerful sheet of water over a padded surface so riders can board or body surf.

After seven years of prior litigation in which WhiteWater – the world’s largest maker of wave machine – unsuccessfully sued Pacific Surf over patent infringement and other claims, Pacific Surf struck back with a \$200 million antitrust suit based on a “sham litigation” theory.

Pacific Surf accused WhiteWater of having filed frivolous suits designed to drive it out of business and to obtain a monopoly in the market. The WhiteWater suits allegedly violated RICO and antitrust statutes.

“Their suit was almost entirely based on the prior litigation,” said Joshua M. Robbins, the Buchalter partner who persuaded a federal jury to

reject the plaintiff’s claims after only an hour’s deliberation. He was joined by co-counsel Roger L. Scott and attorneys Daniel A. Sasse and Sima Namiri-Kalantari of Crowell & Moring LLP. “The plaintiffs had to prove the prior suits we filed were meritless and in bad faith.” *Pacific Surf Designs Inc. v. WhiteWater West Industries Ltd. et al.*, 3:20-cv-01464 (S.D. Cal., filed Jul. 29, 2020).

“We faced the rare challenge of presenting a ‘trial within a trial’ – explaining to the jury what the prior lawsuits were based on and why WhiteWater acted reasonably in pursuing them, even though Pacific Surf was ultimately not found liable in those cases,” Robbins said.

Scott said he made headway with jurors with a witness from his client’s company who credibly explained the wave machine marketplace and was able to show that angry emails he had sent to Pacific Surf were not evidence of harassment or malice and did not drive any of the litigation in question.



JOSHUA M. ROBBINS



ROGER L. SCOTT

“This witness truly believed that Pacific Surf was copying our designs – it’s hard to have malice when you have a genuine belief, and I think the jury saw that,” he said.

For his part, Robbins showed an email from a Pacific Surf founder. “He talks about how their business

plan was to make knockoffs of my client’s product,” Robbins said. “That made it clear my client was being reasonable to suspect infringement.”

Even so, an antitrust case based on prior patent litigation was a lot to explain to jurors. In his closing argument, Robbins lightened the mood. “I slipped in a slide of a photo of me surfing one of our machines,” he said. “It felt good to humanize myself with a bit of self-deprecation. And the other side’s expert had never ridden one.”

Plaintiff lawyer Jennifer Duncan Hackett of Zelle LLP did not return a message seeking comment. The case is on appeal.

— JOHN ROEME

CASE DETAILS	CASE NAME	Pacific Surf Designs Inc. v. Whitewater West Industries Ltd.
	TYPE OF CASE	Racketeering antitrust
	COURT	U.S. Southern District
	JUDGE(S)	U.S. District Judge Roger T. Benitez
	PLAINTIFFS’ LAWYERS	Buchalter APC, Joshua M. Robbins, Roger L. Scott, Thomas C. Rickeman, Alexandria C. Montes; Crowell & Moring LLP, Daniel A. Sasse, Sima Namiri-Kalantari, David C. Griffith
	DEFENSE LAWYERS	Zelle LLP, Jennifer D. Hackett, James R. Martin, Judith A. Zahid, James S. Dugan; The Law Office of Manuel de la Cerra, Manuel de la Cerra