

# Daily Journal

February 9, 2022

## Top Verdicts

The largest and most significant verdicts and appellate reversals in California in 2021

### TOP DEFENSE RESULTS

## Grasshopper House LLC v. Clean and Sober Media LLC et al.

### Case Info

**TYPE OF CASE:** LANHAM ACT FALSE ADVERTISING

**COURT:** CENTRAL DISTRICT

**JUDGE(S):** U.S. DISTRICT JUDGE STEPHEN V. WILSON

**DEFENSE LAWYERS:** STRIS & MAHER LLP, PETER K. STRIS, ELIZABETH R. BRANNEN, DANA E. BERKOWITZ, KENNETH J. HALPERN, VICTOR A. O'CONNELL, DOUGLAS D. GEYSER, JOHN R. STOKES, BRENDAN S. MAHER, SHAUN P. MARTIN

**PLAINTIFF'S LAWYERS:** STEPTOE & JOHNSON LLP, JASON LEVIN, MELANIE A. AYERH



PETER K. STRIS

**"In the end, our meticulous research leading up to trial paid dividends."**

**G**rasshopper House LLC v. Clean and Sober Media LLC et al.

Companies and other organizations have a framework to interact with each other in good faith, but sometimes those limits get tested. Stris & Maher LLP had to argue what those were, and whether their client moved within the contours of the Lanham Act.

Stris & Maher acted as trial and appellate counsel for Clean & Sober Media LLC and other named defendants in an advertising dispute between competing Malibu addiction treatment centers.

The plaintiff, Grasshopper House LLC, represented by Steptoe & Johnson LLP, claimed the defendants published a fraudulent review and rating of its business to divert customers.

Grasshopper House sought \$61 million plus treble damages. The case proceeded to back-to-back jury and bench trials, an appeal to the 9th U.S.

Circuit Court of Appeals, and a final resolution on remand.

Clean and Sober Media wanted to settle for \$1 million before trial, but negotiations on a settlement failed and the case went to trial.

After nearly three years of hard-fought litigation that started in district court to the 9th Circuit and back again, U.S. District Judge Steven V. Wilson in December awarded the plaintiff only \$60,000 in disgorgement and \$126,837 in costs.

"To put those numbers in perspective, Grasshopper recovered less than .01% of the amount that it sought at trial, less than 1% of the amount it sought on remand, and only 6% of the amount it could have got had it accepted

our clients' \$1 million pretrial settlement offer," Stris & Maher founding partner Peter K. Stris said.

"This was a challenging case where the jury returned a verdict for the plaintiff on liability," Stris & Maher partner Victor A. O'Connell said.

"But we turned things around through a key Daubert motion, excluding the plaintiff's damages expert," he added. "That left equitable remedies as Grasshopper's only avenue for relief."

After the subsequent trial on equitable issues, Wilson entered final judgment, denying the plaintiff any monetary relief. The plaintiff appealed to the 9th Circuit, but the appellate panel affirmed the crucial expert exclusion.

Steptoe & Johnson partner Jason Levin argued in November that Wilson should order the defendants to disgorge

more than \$6.7 million to his client while also declaring the case "exceptional" and eligible for attorney fees.

Wilson, however, rejected that in his December order, opting only for the smaller disgorgement award along with costs.

Levin declined to say what, if any, further actions would be taken. Grasshopper House declined to comment.

A lot of the case addressed the contours of the Lanham Act, the mechanics of the applicable statute of limitations, and the types of conduct that can be considered actionable under the statute.

"In the end, our meticulous research leading up to trial paid dividends. We uncovered that Grasshopper had itself published fake reviews and websites supporting its brand," said partner Dana E. Berkowitz. "That moved the judge."

Wilson found in the defendants' favor. *Grasshopper House LLC et al. v. Clean and Sober Media LLC, et al.*, 18-CV-00923 (C.D. Cal., filed Feb. 2, 2018).

"Plaintiff delayed in filing suit from 2011 to 2018, used similar unbranded websites to promote [its business], and decided to only put forward one expert to estimate \$61 million in damages rather than take a more reasonable position throughout the litigation," the judge wrote.

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