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No. 15-

Supreme Court, U.S.
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In the Supreme Court of the United States

MULTI TIME MACHINE, INC.,

Petitioner,

-v-

AMAZON.COM, INC.
and AMAZON SERVICES, LLC,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner sells watches identified by its trademarks. Petitioner, and its distributors, do not sell these watches on the retail website of Respondents, nor are these watches in any way available through this website. A consumer utilizing Respondents' website may conduct a search query specifically identifying a trademark of Petitioner, the website then confirms that this search has been conducted and displays search results, but those results are for competing watches and not the watches of Petitioner. Respondents' website never indicates in response to a consumer's search that Petitioner's watches are not available.

The questions presented are as follows:

1. When a consumer requests a certain branded product, should the seller of multiple brands be required to state, if applicable, that the requested product is not available, or, instead, may the seller simply offer competing brands without disclosing the unavailability of the consumer's choice?

2. If the seller, as in Question 1, offers competing brands without disclosing that the consumer's requested brand is unavailable, is the seller potentially liable for creating a likelihood of confusion under the Trademark Act, 15 U.S.C. 1051 *et seq.*?

3. Is the potential for creating a likelihood of confusion, as in Question 2, resolvable as a matter of law under federal procedures for summary judgment; specifically, is the seller free of any trademark liability because the competing brands are clearly labeled, regardless that the consumer's requested choice is not disclosed as being unavailable?

RULE 29.6 DISCLOSURE

Petitioner Multi Time Machine, Inc. has no parent corporation and no publicly owned corporation owns 10% or more of the stock in Petitioner.

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PETITION FOR A WRIT OF CERTIORARI

Multi Time Machine, Inc., respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals of the Ninth Circuit in this case.



OPINIONS BELOW

The final decision of the court of appeals, reported at 804 F.3d 930 (9th Cir. 2015), is reprinted in the Appendix (“App.”) at 1a-32a. The first decision of the court of appeals (later superseded by the final decision), reported at 792 F.3d 1070 (9th Cir. 2015), is reprinted at App.33a-67a. The decision of the district court, published at 926 F.Supp.2d 1130 (C.D. Cal. 2013), is reprinted at App.68a-91a.



JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The appellate court had jurisdiction under 28 U.S.C. § 1291 (App.8a.) and 15 U.S.C. § 1121(a). The district court had jurisdiction under 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331 and 1338(b). The appellate court’s final judgment was issued October 21, 2015. (App.1a)



STATUTORY PROVISIONS AND JUDICIAL RULES INVOLVED

The relevant statutes for this trademark case are 15 U.S.C. §§ 1114(1)(a) and 1125(a)(1)(A) as relating to likelihood of confusion in determining trademark infringement, and these provide in pertinent part the following:

- **Section 1114(1)**

Any person who shall, without the consent of the registrant—(a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; . . . shall be liable in a civil action by the registrant for the remedies hereinafter provided.

- **Section 1125(a)(1)**

Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods,

services, or commercial activities by another person, . . . shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

- **Rule 56(a) of the Federal Rules of Civil Procedure**

Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.



STATEMENT OF THE CASE

Petitioner, Multi Time Machine, Inc. (“MTM”), owns the trademark “mtm special ops” and other related trademarks that identify MTM’s watches. MTM initiated this action for trademark infringement against Respondents, Amazon.com, Inc. and Amazon Services, LLC. (collectively “Amazon”). This action was predicated on the way in which Amazon’s retail website (at amazon.com) responded to a consumer’s search query for, in particular, MTM’s trademark “mtm special ops.”

By its choice, MTM does not sell its watches on Amazon’s website, and instructs its distributors to do

likewise. (App.3a) It is undisputed that MTM's watches have, at all relevant times, not been available for display or sale on Amazon's website. (App.4a)

A potential consumer utilizing Amazon's website may conduct a search of available products by a query specifically listing only MTM's trademark "mtm special ops." A critical key to this case is what Amazon's website displays in response to that consumer query. That display is shown at App.6a. This display shows the heading Search and mtm special ops in the search field followed underneath by the wording "mtm search ops" (in other words, the subject of the search query is specifically identified in quotation marks), followed underneath by the wording Related Searches: mtm special ops watch (underlining link in original) followed underneath by the wording Showing 10 Results followed underneath by a display of 10 products for which all of the watches shown are competitors of MTM (App.70a), principally the watches of Luminox and Chase-Duer. At no time or place on Amazon's display does it acknowledge that MTM's watches (by the specific trademark or otherwise) are simply not available on Amazon's website.

The district court in California, using the law of the Ninth Circuit, found no likelihood of confusion on Amazon's motion for summary judgment and thus dismissed MTM's action. (App.91a) In the Ninth Circuit, a likelihood of confusion is assessed under the *Sleekcraft* factors, generally an eight-factor test though not all must be considered and other evidence may be considered. *See AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348-49 (9th Cir. 1979).

MTM appealed to the court of appeals which issued its first judgment on July 6, 2015. That judgment held that genuine issues of material fact existed and thus summary judgment was inappropriate. The case was reversed and remanded. (App.54a) The appellate panel consisted of Circuit Judges Silverman and Bea and, sitting by designation, Senior District Judge Quist of the U.S. District Court for the Western District of Michigan. (App.33a) In this first judgment authored by Judge Bea, Judge Silverman dissented. (App.55a-67a)

Amazon then petitioned for rehearing en banc. The same appellate panel issued on October 21, 2015 a superseding judgment authored by Judge Silverman (previously dissenting) and joined by Judge Quist (sitting by designation) with a dissent by Judge Bea. Thus, overall, each judgment was based on a 2 to 1 vote with Judge Quist changing his first vote for the final judgment. The final judgment affirmed the dismissal of MTM's claims by summary judgment.

In granting summary judgment, the district court considered four of the eight *Sleekcraft* factors as relevant and four were not considered as irrelevant. (App.80-81a) In the first appellate judgment, Judge Bea considered "Labeling" (*i.e.*, the display of the search results) as an independent factor (App.42a-44a) and then, with respect to the eight *Sleekcraft* factors, found three less relevant and discussed the remaining five factors, namely, strength of the mark, proximity or similarity of the goods, evidence of actual confusion, defendant's intent, and the degree of purchaser care. (App.45a-53a). Judge Bea pointed

to genuine issues of material fact for Labeling and each of the five foregoing factors.

The final judgment authored by Judge Silverman determined that only the following two factors required consideration:

Further, we are able to determine that summary judgment is appropriate in the present case without delving into any factors other than: (1) the type of goods and the degree of care likely to be exercised by the purchaser; and (2) the labeling and appearance of the products for sale and the surrounding context on the screen displaying the search results.

(App.17a) This judgment considered as “neutral or unimportant” the three factors of actual confusion, defendant’s intent, and strength of the mark. *Id.* These are the very factors considered as having genuine issues in the first judgment by Judge Bea (then joined by Judge Quist). The final judgment did not address the remaining four factors, and from among those, the proximity of goods was considered as having genuine issues as determined by the first judgment.

Overall, in comparing the two appellate judgments, the first judgment considered four of the eight factors as inappropriate for summary judgment, while the final judgment did not consider these factors as even relevant. Further, with respect to the labeling of the goods, the display of the search results, and the degree of purchaser care, the first judgment identified genuine issues rendering summary judgment inappropriate, while the final judgment determined there were no genuine issues with respect to these factors.



ARGUMENT

I. SUMMARY JUDGMENT WAS INAPPROPRIATE

The question to this Court, in a nutshell, is whether summary judgment was inappropriately granted. The conflicts identified above in the Statement of the Case between the first and final appellate judgments show that summary judgment was inappropriate. In the interim of the first and final judgments, no new evidence was presented and there was no newly-issued case law bearing on the matter. Judge Quist changed his vote due, presumably, to the force of attorney argument re-presented in the rehearing petition. If so, *a fortiori*, the arguments of the parties' attorneys should have been allowed to be presented to the jury after submitting to the jury the evidence that clearly contained genuine issues of material fact, as discussed next.

For just the factors that the final judgment considered (quoted above), consider the same as determined by the first judgment. The final judgment raises the “clear labeling” of the products in the search results to new heights—indeed, it becomes a talisman that effectively negates consideration of other issues. In dissent, Judge Bea stated:

Today's brief majority opinion accomplishes a great deal: the majority announces a new rule of law, resolves whether “clear labeling” favors Amazon using its [the majority's] own judgment, and, *sub silentio*, overrules

this court's "initial interest confusion" doctrine.

(App.22a)¹ With respect to clear labeling, the final judgment focused exclusively on the labeling of the ten products depicted in the search results; for instance, the labeling of the competing watches by Luminox and Chase-Durer. *See* search results at App.6a.

MTM's theory of the case, and the one considered in the first judgment, focused on the use of MTM's trademark three times on the page of search results that were then followed by the competing watches. This introductory portion of the search results was not discussed by the final judgment. MTM provided the report of an expert witness explaining that these results, viewed in their entirety, were "ambiguous, misleading, and confusing." (App.42a, 89a) MTM explained that Amazon's use of quotation marks in repeating the search query was misleading. Within the realm of consumer experience, it is known that quotation marks in a search query of a database or an Internet search engine have special significance.² Amazon's use signified that it was responding exactly to what the consumer requested. Although not shown in the sole example at App.6a, it is undisputed that a query on Amazon's website of "mtm special ops" (*i.e.*, with quotation marks) would be reflected by Amazon

¹ Initial interest confusion is a form of likelihood of confusion as discussed *infra* at Argument, III, p. 15.

² *Compare Masson v. New Yorker Magazine Inc.*, 501 U.S. 496, 511 (1991) (recognizing special significance of quotation marks in attributing remarks to a speaker).

as ““mtm special ops”” (*i.e.*, double quotation marks) again giving the assurance to the consumer that the results were driven by the specific query.

MTM additionally showed that Amazon’s competitors, such as bestbuy.com and overstock.com, explicitly state in response to a query for mtm special ops that no products were available. (App.37a) Again, the first judgment determined that this evidence revealed genuine issues inappropriate for summary judgment.

In contrast, as noted the final judgment focused solely on the labeling of the products and never addressed the repetition of MTM’s trademark in the information above the products themselves, the quotation marks, or MTM’s expert report. In response to the second point regarding the practices of competing retailers, the final judgment stated:

MTM argues that in order to eliminate the likelihood of confusion, Amazon must change its search results page so that it explains to customers that it does not offer MTM watches for sale before suggesting alternative watches to the customer. We disagree. The search results page makes clear to anyone who can read English that Amazon carries only the brands that are clearly and explicitly listed on the web page. The search results page is unambiguous—not unlike when someone walks into a diner, asks for a Coke, and is told “No Coke. Pepsi.”

(App.5a) The foregoing quotation was immediately followed by a citation to Judge Silverman’s dissenting opinion in the first judgment. Therein, Judge Silverman

invoked a thumbnail portrait of a comedy sketch from Saturday Night Live with John Belushi. The problem with faulty analogies used in this case, such as the foregoing, is discussed below. The final judgment again let the labeling of the products trump any genuine issues raised by the lack of a forthright statement by Amazon that it does not carry MTM watches.

The remaining factor considered by the final judgment was the type of goods and the degree of purchaser care. A well settled principle of likelihood-of-confusion analysis is to consider the goods at issue and the corresponding degree of care the consumer will exhibit in purchasing those goods. It is within ordinary consumer experience to know that a house, a car, or a grand piano is usually an expensive purchase, and therefore the consumer is presumed to exhibit more care by, for instance, consumer education, more comparative shopping, or exhibiting a hesitancy and avoiding impulse purchases. The theory is that more care equates with more familiarity with the brand of the good being purchased, and thus less likelihood of confusion.

The goods at issue here are watches. It is within ordinary consumer experience to know that watches can cost from ten dollars to ten thousand dollars. In the final judgment, it is appropriate that Judge Bea commenced his dissent with an example of a woman who hears that her brother has mentioned MTM's watches and to purchase one she begins her search of retail websites. This example illustrates an ordinary experience because the woman, a prudent shopper, may not know at first that MTM's watches could be

considered expensive, after all a watch is not a grand piano. This example cautions against over reliance on the purchaser degree of care.

Additionally, MTM pointed out that Amazon's search results showed watches priced at \$ 145.00, \$ 196.33, \$ 299.00, and \$ 320.00. (App.88a) These amounts are not so expensive that, as a matter of law, the degree of purchaser care can be removed from the jury. Further evidence from Amazon's sales pointed to a high rate of same day sales of Luminox watches (MTM's competitor and shown in the search results), thus exhibiting evidence of an impulse purchase at odds with any elevated purchaser care. (App.53a)

The case law also cautions against over-reliance on the purchaser degree of care. Judge Bea appreciated this (App.27a), citing *Grotrarian, Helfferich, Schulz, Th. Steinweg Nachf. v. Steinway & Sons*, 523 F.2d 1331 (2d Cir. 1975). In that case, the Second Circuit affirmed a likelihood of confusion, relying on initial interest confusion, even for the purchase of a grand piano, an expensive product that may invoke a higher level of purchaser care.

The final judgment determined that the "reasonably prudent consumer" was the proper model. (App.12a) But the opinion then referred three times to the expense of the watches to invoke a "high degree of care." (App.15a, 16a, and 19a) This vacillation exhibits the existence of a genuine issue. The opinion did not discuss the above-noted evidence and case law. Additionally, the opinion failed to distinguish between the sophistication of the consumer with respect to procedure and substance. In the years

since searching the Internet first commenced, courts have, understandably, recognized that people have grown more sophisticated with respect to search techniques and viewing search results. That knowledge is knowledge of procedure. (Nevertheless, in this case MTM's expert found Amazon's search display confusing.) The Internet savvy searcher, however, cannot be presumed to substantively knowledgeable as to all the types of goods that may be purchased on the Internet.

By analyzing just the two factors relied on in the final judgment, it is apparent that summary judgment was inappropriate. Moreover, the first judgment (and Judge's Bea's later dissent) pointed to four additional factors evidencing genuine issues. These factors were simply brushed aside in the final judgment. Overall, it is pellucid that summary judgment—based on no genuine dispute of material fact—should not have been granted, and that the case should have been tried to the jury.

II. ANALOGOUS CASE LAW AND FAULTY ANALOGIES

In law, while an analogy based on hypothetical or anecdotal evidence may be a useful illustration, it cannot substitute for analytical thinking. MTM argued analogous case law relating to product substitution; while not a perfect analogy, that law bears on the facts at hand. In response, the final judgment relied on the "No Coke. Pepsi" comedy sketch from Saturday Night Live.

When a patron at a diner requests Coke and is instead served, without explanation or notice, Pepsi, unfair competition arises known as passing off or

palming off. "The tort of palming off by a third party dealer is defined as the unauthorized substitution of the goods of one manufacturer when the goods of another are requested by the customer." *K-S-H Plastics, Inc. v. Carolite, Inc.*, 408 F.2d 54, 59 (9th Cir. 1969), *cert. denied*, 396 U.S. 825 (1969). This form of infringement has been recognized for over a century. *See N.K. Fairbanks Co. v. Dunn*, 126 F. 227 (N.D.N.Y. 1903); *American Fibre Chamois Co. v. De Lee*, 67 F. 329 (N.D. Ill. 1895); *Enoch Morgan's Sons Co. v. Wendover*, 43 F. 420 (D.N.J. 1890). "Palming off has been called the essence of unfair competition." *Pic Design Corp. v. Bearings Specialty Co.*, 436 F.2d 804, 807 n.3 (1st Cir. 1971).

The reliance on "clear labeling" by the final judgment is insufficient to substitute for the seller's duty to inform the patron of any substitution. The customer must be orally advised that a substitution is being made. *See Coca-Cola Co. v. Overland*, 692 F.2d 1250, 1253 (9th Cir. 1982). Even oral notification of such substitution has been held insufficient notice. *See Pic Design*, 436 F.2d at 808-09 (affirming preliminary injunction).

In the *Overland* case, the defendant restaurant that substituted Pepsi for Coke without advising the customer relied on its posted signs and disclosures on menus, but that was rejected by the Ninth Circuit. 692 F.2d at 1253. Indeed, that defense was rejected as early as 1890 in the *Morgan's Sons* case. Therein, the customer who requested the Sapolio brand soap received without explanation a soap branded Pride of the Kitchen. 43 F. at 420-21. *See also Heaton Distrib. Co., Inc. v. Union Tank Car Co.*, 387 F.2d 477, 483-84

(8th Cir. 1967) (“So thoroughly convinced were the customers that they were getting a Lindsay unit that even if they saw the name Water King on the unit they thought it was one of Lindsay’s . . .”). In *Clamp Mfg. Co., Inc. v. Enco Mfg. Co., Inc.*, 1987 WL 46520 at *6 (C.D. Cal.), the defendant was liable for palming off through product substitution in response to a customer’s request, as well as offering goods with an infringing trademark. On appeal, the Ninth Circuit rejected as a defense “[t]he fact that [defendant] labeled its clamps with its name . . .” *Clamp Mfg. Co., Inc. v. Enco Mfg. Co., Inc.*, 870 F.2d 512, 518 (9th Cir. 1989).

Here, the district court responded to the above argument by an analogy (thought to be applicable) to a patron who requests Coke and instead is served a tray of products labeled Pepsi, RC Cola, Blue Sky Cola, Dr. Pepper, and Sprecher Root Beer. (App.78a at n.4) That analogy is too artificial and removed from reality. In reality, the patron and server would undoubtedly communicate further. Patron: “Why the tray of products? Tell me, do you have or not have the Coke I requested.” The reality for the patron at Amazon’s website is that no further communication is possible as the consumer is insulated and isolated, left alone to decipher the search results.

The district court relied on another analogy (App.74a) as described in Judge Berzon’s concurring opinion in *Playboy Enters., Inc. v. Netscape Communications Corp.*, 354 F.3d 1020, 1035 (9th Cir. 2004). Therein, Judge Berzon (in a case well before the instant one) hypothetically considered shopping experiences at Macy’s store and website wherein the

shopper, looking for Brand A, is exposed to Brand B and purchases the latter. As to a likelihood of confusion, Judge Berzon's *dicta* said "I very much doubt it." This analogy is clearly not applicable because Macy's offered the requested Brand A and was therefore not called upon to say, "No Brand A, just Brand B." The Macy's analogy is also poorly constructed. If a customer were to request a specific brand, the clerk would not direct them to competing brands without first informing them that their requested brand was unavailable.

The same logic applies to Judge Silverman's reliance on the "No Coke. Pepsi" analogy. Judge Bea pointed out (App.43a-44a at n.6) that, in the applicable fashion of John Belushi, Amazon does not say "No MTM, just other brands below."

III. INITIAL INTEREST CONFUSION

In this case, there is much discussion in the three judicial opinions of initial interest confusion, though the general framework is not in dispute.

Initial interest confusion is customer confusion that creates initial interest in a competitor's product. Although dispelled before an actual sale occurs, initial interest confusion impermissibly capitalizes on the goodwill associated with a mark and is therefore actionable trademark infringement.

Playboy Enterprises, 354 F.3d at 1025. *See also* App.10a-11a at n.2 (final judgment), App.40a (first judgment), and App.76 at n.2 (district court). Initial interest confusion is thus a form of likelihood of confusion, as are other forms including post-sale

confusion and reverse confusion. See 4 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 23.5 (4th Ed.).

Initial interest confusion has been equated with a “bait and switch” tactic. See *1-800 Contacts, Inc. v. Lens.com, Inc.*, 722 F.3d 1229, 1243-44 (10th Cir. 2013); *Checkpoint Systems, Inc. v. Check Point Software Technologies, Inc.*, 269 F.3d 270, 294 (3d Cir. 2001); *Dorr-Oliver, Inc. v. Fluid-Quip, Inc.*, 94 F.3d 376, 382 (7th Cir. 1996). The mark of the owner is used as bait to lure the consumer to the competitive products. This is a particularly apt analogy here as the introductory information of the search display lures the consumer into the false expectation that the displayed products have a connection to MTM’s trademark. “The modern test of infringement is whether the defendant’s use is likely to cause confusion not just as to source, but also as to sponsorship, affiliation or connection.” McCarthy, *supra*, at § 23.76. This bait and switch analysis also dovetails with the law of product substitution as passing off, as discussed above. In this scenario, the seller not only improperly substitutes Pepsi for Coke without notice, but also has a sign in the window saying “Get Coke Here.” Amazon’s opening use of “mtm special ops” in quotation marks sufficiently fits this scenario such that summary judgment was inappropriate.

As noted above, initial interest confusion may be dispelled before any actual sale, though it remains an actionable form of infringement. This facet of initial interest confusion dovetails with the 1962 amendment to the Trademark Act at 15 U.S.C.

§ 1052(d) (this section first introduces “likelihood of confusion” into the Act) that removed reference to “purchasers.” *See Electronic Design & Sales, Inc. v. Electronic Data Systems Corp.*, 954 F.2d 713, 716 (Fed. Cir. 1992) (discussing amendment). This broadening of the Act thus certainly included potential purchasers as the target for a likelihood of confusion. *Id.* When a shopper first views Amazon’s search display, she may only be a potential purchaser, much like window shopping. The initial interest confusion, however, remains actionable even if (without conceding this point) any confusion is dispelled later in further navigating the website and making a purchase.

In Judge Bea’s dissent from the final judgment, he points out that the majority impermissibly reads “at point of sale” into its analysis. (App.23a) The majority thus contravenes the statutory framework, from the above-mentioned amendment, that eliminated only point of sale analysis for purchasers.

Moreover, the final judgment erases the concept that likelihood of confusion is to be treated as a question of fact. It barely acknowledges this standard: “The likelihood of confusion is often a question of fact, but not always.” (App.16a) It then runs roughshod over this standard by choosing to analyze only two factors bearing on the conclusion, and then ignoring or brushing aside the thoughtful and credible analysis of other factors in the first judgment pointing to genuine disputes of material fact. The majority effectively treated likelihood of confusion as a question of law comparable to the standard of the Second Circuit which treats the

individual factors as a question of fact, but the weighing and balancing of the factors, for the ultimate determination, as a question of law. *See, e.g., Starbucks Corp. v. Wolfe's Borough Coffee, Inc.*, 588 F.3d 97, 105 (2d Cir. 2009).

The majority also runs roughshod over the well settled procedures for summary judgment. Under those procedures, all inferences from the underlying facts must be viewed in the light most favorable to the non-moving party. *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The majority states that the display of search results (App.6a) is, in essence, fixed, and therefore not subject to dispute. (App.16a) This ignores the favorable inferences to be drawn from Amazon's introductory use of MTM's trademark and the absence of a forthright statement that Amazon does not carry MTM's products, as requested by the shopper. Any weight accorded to the clear labeling perceived by the majority, must be balanced against those inferences in MTM's favor.

In view of the foregoing, Judge Bea concludes in his dissent (App.32a):

More troubling, the majority ignores the role of the jury. Summary judgment law is an aid to judicial economy, but it can be so only to the extent that it comports with the Seventh Amendment. Were we to reverse and remand, MTM might well lose. The likelihood of that outcome is irrelevant to the question whether there is a genuine issue of fact.

As demonstrated herein, this case presents “compelling reasons” for a writ of certiorari because the final judgment appealed from “has so departed from the accepted and usual course of judicial proceedings.” Sup. Ct. R. 10.



CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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