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Copyright Suit Alleging Questionable Advertising Activity Nonetheless Constitutes "Advertising Injury"

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In *Superior Integrated Solutions, Inc. v. Mercer Insurance Company of New Jersey, Inc.*, 2020 WL 4979476 (N.J. Super. Ct. App. Div. Nov. 10 2020), the New Jersey Appellate Division determined that "advertising injury" coverage applied for duty to defend purposes notwithstanding that the underlying suit did not allege that the insured engaged in traditional advertising activity. The underlying plaintiff, Reynolds & Reynolds Co., commenced suit against the insured, Superior Integrated Solutions, Inc., alleging that Superior made an unauthorized copy of Reynolds' automotive dealer management software, which Reynolds' customers used to manage vehicle inventory, customer contacts and financial information.

The complaint alleged that Superior "actively persuaded Reynolds's customers to breach their [contractual] promise to Reynolds, so that Superior could peddle their unauthorized services to these customers for a fee." The policy applied to "'advertising injury' (including copyright infringement) arising out of an offense committed in the course of advertised goods, products, or services of your business/operations covered by this policy." Relying upon *Information Spectrum, Inc. v. The Hartford*, 182 N.J. 34 (2004), Mercer argued that Superior was accused only of purloining Reynolds intellectual property and selling the infringing software, not advertising it, which is insufficient to trigger the advertising injury coverage.

The court disagreed on the basis that Superior was alleged to have informed Reynolds' customers that Reynolds' program could be integrated with Superior's product, thus satisfying the necessary nexus between the infringement and the advertising.