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Third Circuit Affirms Insurer Has No Duty to Defend Trademark Infringement Claims

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***State Farm Fire & Casualty Co. v. Hines*, 2022 U.S. App. LEXIS 28639 (3d Cir. Oct. 14, 2022)**

October 14, 2022, the United States Court of Appeals for the Third Circuit affirmed the New Jersey district court's determination that an insurer had no duty to defend a trademark infringement lawsuit commenced against the insured, as reported in our blog on August 31, 2021. The insured and its proprietor were sued for trademark infringement in connection with an alleged software piracy operation. The policy at issue applied to trade dress infringement as part of the "personal advertising injury" coverage part but expressly excluded trademark infringement, with the respective terms undefined. The Third Circuit first observed that "by referring to both the infringement of trademark and trade dress, the policies contemplate different meanings for those terms." After noting that, while generally similar, the offenses contain distinct elements, the court held that the complaint against the insured stated a cause of action only for trademark infringement, such that the exclusion applied to bar coverage and relieve the insurer of the duty to indemnify.