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**EDWARDS ANGELL PALMER & DODGE OBTAINS RARE REMEDY OF
RETROACTIVE VACATUR OF CONSENT DECREE**

New York, NY - Exercising a rarely used power, the U.S. District Court for the Eastern District of New York has retroactively vacated a 20-year-old permanent injunction. Global beauty care manufacturer L'Oreal attempted to extend the injunction to block EAPD's client, Pro's Choice Beauty Care, Inc., and co-defendant Quality King Distributors Inc., from buying or selling L'Oreal's Matrix line of hair care products. The Order, handed down on November 13, 2009, on remand from a federal appeals court, vacated the 1990 injunction back to 2002. The Judge declined to credit L'Oreal's argument that it had been damaged, and found that L'Oreal was actually seeking to enforce the injunction inappropriately as part of a vendetta against Pro's Choice.

EAPD partner Anthony J. Viola and EAPD counsel Andre K. Cizmarik worked on the matter and are pleased with the outcome. Mr. Viola believes that "L'Oreal filed suit vindictively, trying to extend an antiquated injunction to circumstances to which it does not apply and to a company which did not exist then, based on arguments which do not comport with reality."

In 2004, L'Oreal brought this contempt proceeding against Pro's Choice and others for alleged violations of a 1990 consent injunction barring Quality King from purchasing, distributing, selling or offering any Matrix hair-care products. L'Oreal claimed that the injunction also applied to Pro's Choice, which had been spun off from Quality King in 2001. L'Oreal sought nearly \$100 million in damages and a prohibition against Pro's Choice selling Matrix products in the future.

After two years of discovery and two weeks of trial, Judge Leonard D. Wexler ruled that the defendants were not in violation of any laws by selling the "genuine, unadulterated" Matrix hair-care products. Under the "first sale" doctrine trademark owners cannot control the distribution of the trademarked item beyond the first sale. EAPD succeeded not only in defending the client against the contempt claim, but also in convincing Judge Wexler to vacate the 1990 injunction. L'Oreal appealed. Mr. Viola argued the appeal and the Second Circuit issued a decision in April 2009, upholding the factual findings of the district court, and also affirming the district court's decision to vacate the consent decree prospectively. The Court of Appeals also agreed with EAPD that a district court has the power to terminate an injunction retroactively, but found that the reasons for doing so must be explicitly set forth by the district court. Since the district court had not done so, the Court of Appeals remanded on that issue.

The decision reported here is the trial judge's order agreeing that the injunction should be vacated retroactively as well. As a result, Pro's Choice continues to be free to sell Matrix products without restriction. The district court also declined to award any damages to L'Oreal. The district court case is Matrix Essentials v. Quality King Distributors Inc. et al., case number 90-cv-01070.

Anthony J. Viola has over twenty years of experience in the area of complex and commercial litigation, with particular emphasis on patent and trademark litigation, corporate and business disputes, distribution arrangements, shareholder and investor lawsuits, securities and antitrust, and business dissolutions. Mr. Viola received his law degree from Georgetown University, and his undergraduate degree from Fordham University.

Andre K. Cizmarik has been involved in a wide range of civil litigation matters, involving commercial contract disputes, employment-related matters, legal malpractice, copyright, trademark and patent infringement, unfair competition, securities and probate litigation. Mr. Cizmarik received his law degree from Columbia University School of Law and his undergraduate and masters degrees from Fordham University.

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