

Ethics in business and the law



Chris, Ian, and Matt decide to make an aftershave and call it Funny Face. Ironically, that is exactly what happened when Donald Margolin purchased the product online from their distributor, Novelty Now. After one use of this product, Donald Margolin received his funny face to the tune of his face becoming “ a permanent shade of blue” due to the PYR emulsifier used in the compound. This defacement resulted in legal action being taken against the founders of Funny Face (Chris, Ian, and Matt) as well as their manufacturer and distributor, Novelty Now.

The case of Donald Margolin Empire Inc. versus Chris, Ian, Matt, and Novelty Now is a bit tricky in regards to jurisdiction. The founders of Funny Face are located in California. Their manufacturing and distributing partner, Novelty Now, is located in Florida. Donald Margolin, and his company, are located in New York. Due to the various states involved, the case does qualify for concurrent federal jurisdiction, a mixture of federal and state, because it does meet the conditions needed for a Diversity of Citizenship case. Such a case can only be brought forth when the plaintiff and defendant reside in separate states and there are concerns in excess of \$75K (Kubasek et al, 2017). However, there still needs to be a decision on which state will hear the case. Under long-arm statutes, New York could obtain jurisdiction if the defendants, Funny Face or Novelty Now, had enough minimum contacts in the state. In order to meet that requirement, the defendants would need to purposely take action in that state; in this case, online sales of their goods in that state would suffice in meeting the requirement. However, the contract between Novelty Now and the founders of Funny Face clearly states that any disputes must be settled in Florida.

There is the question if litigation can be brought into play given the disclaimer on the

website for Funny Face. Their website clearly states that consumers cannot take Chris, Ian, or Matt to court. An argument could be made that this implies they prefer to settle any disputes in another method. Alternative dispute resolution is defined as resolution of legal problems through methods other than litigation (Kubasek et al, 2017). In order to keep a functioning business relationship, Chris, Ian, Matt or Novelty Now may opt for mediation. Mediation is when disputing parties select a neutral third party to help facilitate communication while suggesting ways to solve the dispute. Using mediation to come to a resolution with Donald Margolin, both companies would be able to work with him in a more informal and relaxed setting. Whereas Donald Margolin may opt for a different form of alternative dispute resolution, such as arbitration. Arbitration is the resolution of a dispute by a neutral third party, such as an Arbitrator or a panel of Arbitrators, outside the judicial setting (Kubasek et al, 2017). This method, which is more similar to a trial, may fair better for Donald Margolin if the Arbitrator makes a decision in his favor since it will be legally-binding. Arbitration would allow for all parties involved to keep the contents of the dispute private while also providing a quicker and more cost-effective method of resolution over litigation. If Donald Margolin is determined to go through with litigation against Novelty Now, he may opt to begin with an alternative dispute resolution method known as a summary jury trial. This option would allow for an abbreviated trial that leads to a non-legally binding verdict that would give him an idea of how an actual trial would go (Kubasek et al, 2017).

If Donald Margolin does choose to proceed with litigation, he will have a hard time holding the corporations as a whole liable. Corporations do not have mind and therefore do not meet the criteria of mens rea, or the guilty mind (Kubasek et al, 2017). However, there is a case for vicarious liability against those in charge at Novelty Now. This type of liability is when responsibility is imposed on a person or organization for damages caused by another (Kubasek et al, 2017). Novelty Now, at the direction of Funny Face founder Chris, substituted the non-FDA approved PYR emulsifier into the compound. This was the ingredient that caused the damage to Donald Margolin and turned his face “ a permanent shade of blue.” All three founders of Funny Face can be held criminally liable for fraud. Fraud is the intentional deception which causes harm to others (Kubasek et al, 2017). Chris, Ian, and Matt opted to swap out ingredients in their original formula for a cost-cutting option that was not approved by the FDA. The founders of Funny Face and Novelty Now both neglected to disclose this information and were equally responsible for failing to take appropriate action to stop Donald Margolin from being effectively disfigured by their product.

Had Chris, Ian, or Matt focused on making ethical decisions in their business dealings, they could have made a decision that ended in a more pleasant manner. Funny Face and Novelty Now only had to keep three guidelines in mind to make an ethical decision, the Golden Rule, Public Disclosure, and Universalization (Kubasek et al, 2017). First and foremost is the Golden Rule of treating others how you would want to be treated. Chris did not keep this rule in mind when deciding to opt for a cheaper alternative for the compound. Had he thought about this, he may have chosen to do a bit more

research for a cost-effective option that was also FDA approved. Before going through with the direction to use PYR as a substitute, Novelty Now should have first considered a public disclosure test. By doing so, they could evaluate the possible outcome of consumers being made aware of a non-FDA approved ingredient. Lastly, neither company took the concept of universalization into account. The idea of universalization is simply a question of “ what would happen to the world if every other company did what I am about to do?” (Kubasek et al, 2017). In the case of substituting PYR emulsifier, the entire world would turn a “ a permanent shade of blue” if other companies opted for this cheaper ingredient.

The case of Donald Margolin v. Chris, Ian, Matt, and Novelty Now is one that brings multiple areas of law into question. Overall, Donald Margolin is within his right to enter into alternative dispute resolution with Chris, Matt, and Ian or bring litigation against Novelty Now. Neither defendant acted in an ethical manner when planning, manufacturing, or distributing the aftershave known as Funny Face. Due to their negligence and fraudulent actions, they can be held criminally liable for the disfigurement that occurred when Donald Margolin used the aftershave.

REFERENCES

Kubasek, N. et al. (2017). Dynamic Business Law. Retrieved January 25, 2019 from <https://newconnect.mheducation.com/flow/connect.html>.