

Medinformatix Wins Breach of Contract and Copyright Infringement Case

In the case of MedInformatix v. Acermed, Timothy McGonigle's client, Medinformatix Inc. prevailed in a breach of contract/copyright infringement lawsuit. Timothy McGonigle's client was awarded the sum of 785,704. Timothy McGonigle's client also prevailed on the cross-complaint seeking in excess of four million dollars in damages.

MedInformatix's predecessor and C.A.R.E.I.S. #1 were parties to a 1996 Reseller Agreement. In 2001, C.A.R.E.I.S. #1 and another company, Systems West, joined forces to form a new company, Acermed, which continued doing business with MedInformatix as it has been doing before.

Acermed carried on the business of C.A.R.E.I.S. #1 by continuing to sell MedInformatix's software, holding itself out to be an authorized reseller of the product, benefiting by MedInformatix's success and goodwill, and making a profit from the sales; basically, Acermed accepted all the benefits of the Reseller Agreement.

However, the relationship deteriorated as Acermed refused to cure its large overdue account, refused to acknowledge the Reseller Agreement, and began developing a competing product. As a result,

in July of 2005, MedInformatix terminated Acermed's reseller authority.

Despite the fact that Acermed was no longer authorized to demonstrate, distribute or sell MedInformatix software, MedInformatix received complaints from third parties that Acermed was still demonstrating the MedInformatix product. Then

Judge Taylor awarded MedInformatix statutory damages in the amount of \$150,000 for Acermed's willful infringement. He also awarded breach of contract against Acermed in the amount of \$279,397, and attorneys fees and costs in the amount of \$356,307.00

MedInformatix came to discover that Acermed engaged in effort to copy the MedInformatix software in an effort to create its own competing software.

Accordingly, in September of 2005, Timothy McGonigle filed a complaint on behalf of MedInformatix against Acermed in the United States District Court for copyright infringement, trade secret misap-

propriation, breaches of contracts, unfair business practices, account stated and goods sold and delivered. Michael McCarthy of the law firm of Nemecek & Cole was added as co-counsel for MedInformatix.

Acermed retained the Newport Beach firm of Stradling, Yocca, Carlson & Roth to represent it in the litigation. Acermed filed a counter-claim against MedInformatix seeking in excess of four million dollars in damages.

Acermed compelled the matter to Arbitration with the Honorable Gary Taylor, a retired judge of the United States District Court. After a two week trial, Judge Taylor concluded that MedInformatix owned a valid copyright to its software program and product. Judge Taylor found that Acermed copied MedInformatix's copyrighted materials.

Judge Taylor also found that MedInformatix's software was the subject of considerable creative effort. MedInformatix did not simply gather its materials from a book or industry standards. MedInformatix worked with doctors and others to develop specialized and protectable materials.

Judge Taylor concluded that Acermed treated MedInformatix's

materials as if they were an industry standard, in the public domain, for use by others. Judge Taylor found that there was ample evidence of intent to copy MedInformatix's software.

Acermed's plan was to develop a competing product by standardized and more efficient design, through incorporation of existing materials from other sources. Acermed treated MedInformatix's materials as non-protected, and disclaimed the agreement between the parties with its protective provisions.

Judge Taylor found that Acermed had improperly intended to copy MedInformatix's copyrighted soft-

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ware. Judge Taylor awarded MedInformatix statutory damages in the amount of \$150,000 for Acermed's willful infringement.

Judge Taylor also awarded breach of contract damages against Acermed in the amount of \$279,397, as a result of Acermed's

failure to pay MedInformatix the amounts due under their contract.

Judge Taylor found in favor of MedInformatix against Acermed on its multi-million dollar counterclaim. A copy of Judge Taylor's decision can be found on the firm's website.

Finally, Judge Taylor also found that MedInformatix's counsel, Timothy McGonigle and Michael McCarthy, did an excellent job in presenting their case. Judge Taylor awarded attorney's fees to MedInformatix's counsel under the Copyright Law in the amount of \$356,307.

About Timothy McGonigle

Timothy D. McGonigle handles a broad spectrum of litigation disputes on behalf of individuals and corporations. The firm, founded in 1989, is one of the top plaintiff firms in Los Angeles and has obtained numerous multi-million dollar verdicts and settlements on behalf of the firm's clients.

Timothy D. McGonigle is the firm's principal trial attorney, having practiced law for twenty years. The firm handles Civil Litigation in all California Courts, including Attorney Malpractice and Attorney Fee Disputes, Intellectual Property Disputes, Registered Representative disputes with brokerage houses, Insurance Disability Dispute, Insurance Bad Faith, Mold Litigation, Business Torts, Stock Broker Disputes, Securities Litigation. The firm is an "AV" rated law firm, the highest rating available, which demonstrates the high quality of legal services provided to the public.

Timothy D. McGonigle, Esq.

Timothy D. McGonigle Prof. Corp
233 Wilshire Boulevard, Suite 700
Santa Monica, California 90401
Telephone: (310) 478-7110
Facsimile: (31) 260-9700

