

Insights



March 1, 2019

What the Justices are Focusing on in Bankruptcy TM Case

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Law360

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The U.S. Supreme Court heard oral argument in the matter of *Mission Product Holdings Inc. v. Tempnology LLC (In re Tempnology LLC)* on Feb. 20, 2019.[1] The petitioners hope to resolve a circuit split regarding ongoing trademark usage pursuant to a license agreement following the rejection of such agreement under Title 11 U.S.C. Sections 365(a) and (n).

Case Overview

The primary issue in *Tempnology* first arose in the seminal 1985 case *Lubrizol Enters. Inc. v. Richmond Metal Finishers Inc.*, in which the Fourth Circuit held that an “executory contract” under Section 365(a) of the Title 11 of the United States Code included intellectual property licenses.[2] Further, the *Lubrizol* court held that rejection of an executory contract effectively terminates an intellectual property license.

Three years later and in reaction to *Lubrizol*, Congress enacted additional legislation to define “intellectual property” within the Bankruptcy Code. Congress also added Bankruptcy Code Section 365(n) regarding what happens to intellectual property following the rejection of an executory contract.

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