

SOUTHERN CALIFORNIA

including a request for fees pursuant to 42 U.S.C. § 1983, the defendants agreed to pay Morales \$2,475,000.

DEMAND	After the verdict on liability, Morales demanded \$2,300,000, inclusive of attorney fees
OFFER	The defendants offered \$1,000,000, inclusive of attorney fees or a structured settlement valued at \$1,500,000.
INSURER(S)	Self-insured for the county of Ventura
TRIAL DETAILS	Trial Length: 11 days Jury Deliberations: 6 days Jury Poll: 7-0 on liability; 7-0 on damages
PLAINTIFF EXPERT(S)	Roger Clark, police practices & procedures, Rexburg, ID Ramon Gomez, M.D., family practice, Santa Paula, CA Roger Bertoldi, M.D., neurology, Beverly Hills, CA
DEFENSE EXPERT(S)	Cynthia Chabay, M.D., neurology, Beverly Hills, CA

—Janelle Foskett

U.S. DISTRICT COURT, ORANGE

INTELLECTUAL PROPERTY

Infringement — Trade Dress

Competitor copied design and packaging of baby bank

VERDICT (P)	\$3,645,660
CASE	Perine Lowe, Inc. d/b/a Child to Cherish v. Dolly Inc., No. SACV02-669 JVS (MLGx)
COURT	United States District Court, Central District, Santa Ana, CA
JUDGE	James V. Selna
DATE	10/31/2003
PLAINTIFF ATTORNEY(S)	Craig McLaughlin, Levin Intellectual Property Group, Laguna Beach, CA Becky V. Christensen, Levin Intellectual Property Group, Laguna Beach, CA

DEFENSE

ATTORNEY(S)	Greg Ahrens, Wood Herron & Evans, Cincinnati, OH P. Andrew Blatt, Wood Herron & Evans, Cincinnati, OH
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FACTS & ALLEGATIONS Plaintiff Perine Lowe Inc., operating as Child to Cherish in Brea since 1987, designed, manufactured and sold high-end children's keepsakes, accessories and gifts. In June 2002, Perine Lowe discovered that another company, Tipp City, Ohio-based Dolly Inc., allegedly copied the design of Perine Lowe's unique infant keepsake ceramic coin bank, widely known as "A Block to Grow On," and its packaging. Dolly Inc. was making and selling a substantially and confusingly similar product and package, allegedly inferior in all aspects, and calling it "Baby's Keepsake Ceramic Bank."

On July 18, 2002, Perine Lowe sued Dolly Inc., alleging claims of trade dress infringement and copyright infringement, as well as unfair competition under both the Lanham Act and the common law of California and violation of California Business & Professions Code § 17200 et seq. Perine Lowe also sought a permanent injunction.

According to Perine Lowe, Dolly Inc. admitted that: 1) Perine Lowe's product was the first of its kind; 2) Dolly Inc. purchased Perine Lowe's product and package from one of Perine Lowe's longstanding customers; and 3) Dolly Inc. transported them to its design facility before development of the infringing product and package had begun.

Dolly Inc. denied Perine Lowe's allegations and denied that it copied any aspects of Perine Lowe's product or package.

INJURIES/DAMAGES Perine Lowe Inc. originally sought compensatory damages of \$1.8 million as a result of Dolly Inc.'s infringement and unfair competition. Perine Lowe also sought a permanent injunction and punitive damages.

Per defense counsel, at trial, Perine Lowe sought compensatory damages of \$14.6 million.

RESULT In August 2002, then presiding Judge Gary L. Taylor issued a preliminary injunction against Dolly Inc., prohibiting it from copying, importing, selling and advertising its "Baby's Keepsake Ceramic Bank." In August 2003, currently presiding Judge James V. Selna denied all of Dolly Inc.'s summary judgment motions and the case went to trial.

On Oct. 31, 2003, after an eight-day trial, the jury found for Perine Lowe Inc. after finding Dolly Inc. liable for both trade dress and copyright infringement. The jury awarded Perine Lowe Inc. \$10,330 in lost profits and \$10,330 for Dolly Inc.'s profits. The jury found in favor of Dolly Inc. with regards to Perine Lowe's claim of packaging trade dress infringement and awarded no damages.

The jury also found that the trade dress infringement was willful and intentional and punitive damages were warranted. The jury awarded Perine Lowe \$3,625,000 in punitive damages, which created a total award of \$3,645,660.

DEMAND \$1,800,000
OFFER Confidential

TRIAL DETAILS Trial Length: 8 days
 Jury Deliberations: 5.5 hours
 Jury Poll: 8-0
 Jury Composition: 6 female; 2 male

PLAINTIFF EXPERT(S) Jules Kamin, Ph.D., M.B.A., economics, Los Angeles, CA

DEFENSE EXPERT(S) Keith Hock, C.P.A., C.V.A., accounting, Cincinnati, OH

POST-TRIAL Post-trial motions are expected to be filed following the entry of judgment.

—Randy Stewart

VENTURA COUNTY

MOTOR VEHICLE

Rear-ender — Truck

Driver's foot slipped off the brake and hit the accelerator

VERDICT (P) \$144,609

CASE David Ramos v. Ryan Doud and Potelco Inc., No. CIV2209631

COURT Superior Court of Ventura County, Ventura, CA

JUDGE Joe D. Hadden (Ret.)
DATE 6/18/2003

PLAINTIFF ATTORNEY(S) John H. Howard, Law Offices of John H. Howard, Ventura, CA

DEFENSE ATTORNEY(S) Stephen H. Smith, Yoka & Smith, Los Angeles, CA

FACTS & ALLEGATIONS On Nov. 13, 2001, plaintiff David Ramos, a 42-year-old lineman for Southern California Edison, was stopped in an Edison utility truck at a traffic signal on the eastbound lane of Telegraph Road in Ventura. Ryan Doud, while in the course and scope of his employment with Potelco Inc., was operating Potelco's 1995 Chevrolet pickup truck. The defense claimed that while Doud was stopped behind Ramos,

he reached for a piece of paper on the passenger side floor. His foot slipped off the brake and hit the gas, causing his vehicle to rear-end Ramos' truck. Ramos asserted that Doud's truck had not come to a full stop but was, in fact, still moving when Doud hit the gas and caused this accident. Ramos sued Doud and Sumner, Wash.-based Potelco Inc., alleging vehicular negligence. The defendants did not dispute liability.

INJURIES/DAMAGES *herniated disc at L5-S1*

Ramos contended that as a result of the accident, he suffered a herniated disc at the L5-S1 level, which necessitated a discectomy and fusion that would permanently disable him from his occupation as a lineman for Southern California Edison. He claimed that his injuries were entirely caused by this accident. Ramos' medical expert, Russell Nelson, an orthopedist, testified that Ramos would never be able to hold any job other than a sedentary occupation. Ramos claimed past medical specials of approximately \$125,000, future medical specials/loss of services of approximately \$400,000, past lost wages of \$135,000 and future lost wages of between \$1.3 million and \$1.7 million.

The defendants contended that, because of the slow speed of Doud's vehicle and the disparity in the weights of the respective vehicles (Ramos' vehicle weighed approximately four times that of the defendants), Ramos received, at most, a soft-tissue injury. Further, the defendants maintained that even if surgery was reasonable and necessary, Ramos' failure to have the surgery constituted a failure to mitigate. Ramos' treating neurosurgeon, Moustapha Abou-Samra, who intended to perform the surgery upon Ramos, testified that he expected the surgery would be successful and, if so, Ramos could return to work full-time, including overtime, without restriction.

The defendants contended that Ramos suffered, at most, a soft-tissue injury. Further, even if the surgery was necessitated by the accident, Ramos could have had the surgery in April of 2002, when first recommended by treating physician Samuel Small. He thereby could have significantly mitigated his damages. The defendants further contended, based upon Ramos having made a stress disability claim 9 months prior to the accident, in which a psychiatrist retained by his employer concluded that Ramos' claims were either not genuine or exaggerated. Similarly, the claims in this matter were false or grossly exaggerated.

RESULT The jury found for Ramos and awarded him \$144,609

DEMAND \$750,000
OFFER None, with an indication of \$200,000 (per plaintiff's counsel); \$250,000 (per defense counsel)

INSURER(S) Self-insured

TRIAL DETAILS Trial Length: 8 days
 Jury Deliberations: 2.5 days
 Jury Poll: 9-3