

USA: Xlear, Inc. v. Focus Nutrition, LLC, United States Court of Appeals, Tenth Circuit, No. 17-4126, 26 June 2018

Kluwer Trademark Blog

July 9, 2018

Cheryl Beise (Wolters Kluwer Legal & Regulatory US)

Please refer to this post as: Cheryl Beise, 'USA: Xlear, Inc. v. Focus Nutrition, LLC, United States Court of Appeals, Tenth Circuit, No. 17-4126, 26 June 2018', Kluwer Trademark Blog, July 9 2018, <http://trademarkblog.kluweriplaw.com/2018/07/09/usa-xlear-inc-v-focus-nutrition-llc-united-states-court-appeals-tenth-circuit-no-17-4126-26-june-2018/>

A federal district court's award of attorney fees under the Lanham Act and Utah's Truth in Advertising Act (UTIAA) to a defendant following the parties' stipulation of dismissal has been vacated and the case remanded by the U.S. Court of Appeals in Denver. The defendant was not a prevailing party entitled to attorney fees under the Lanham Act because there was no court action that materially altered the legal relationship between the parties. While it was possible that the defendant could be considered a prevailing party for purposes of the UTIAA, the case was remand for analysis of the factors governing prevailing party status under Utah law in the first instance and for determination, if appropriate, of the portion of fees incurred in defense of the UTIAA claim and the reasonableness of the requested fees (Xlear, Inc. v. Focus Nutrition, LLC, June 26, 2018, McHugh, C.).

A full summary of this case has been published on [Kluwer IP Law](#).