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# Kluwer Trademark Blog

## Trademark Case: Sleepy's LLC v. Select Comfort, USA

Matt Pavich · Wednesday, December 12th, 2018

For purposes of the Lanham Act's fee-shifting provision, "exceptional" cases are those that stand out from others in the manner set forth for Patent Act fee awards in the Supreme Court's holding in *Octane Fitness*, the U.S. Court of Appeals in New York City has held, joining several other circuit courts. The Second Circuit vacated and remanded a district court's award of attorney fees to defendants that successfully defended against Lanham Act claims regarding statements made to a representative of a bedding retailer in the presence of a third party. The fee award itself also was vacated due to the district court's failure to explain its rationale for apportioning 75 percent of the time billed to the Lanham Act claim in calculating the amount of the award. In addition, the Second Circuit vacated the district court's determination that the statements at issue could not support defamation claims because they had not been "published" under New York's law of defamation. The district court was instructed on remand to determine whether the retailer consented to the publication (*Sleepy's LLC v. Select Comfort*, November 27, 2018, Sack, R.).

Case date: 27 November 2018

Case number: No. 15-3560

Court: United States Court of Appeals, Second Circuit

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

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