

Rubik's Cube TMs Obtained By Fraud, Rival Co. Says

By **Tiffany Hu**

Law360 (February 6, 2018, 7:01 PM EST) -- A puzzle company called Cubicle Enterprises has sued the maker of the Rubik's Cube in New York federal court, alleging that a number of its trademark registrations on the iconic toy were "fraudulently procured."

Saying it was forced to sue Rubik's Brand Ltd. because of threats of litigation over the sale of similar products, Cubicle Enterprises said on Friday that three of Rubik's Brand's trademark registrations were obtained by fraud on the U.S. Patent and Trademark Office. In the case of one such registration, Cubicle says, Rubik's Brand failed to disclose that utility patents existed for the same design; if it had, an examiner would have ruled it too "functional" to also be covered by trademark law.

As for the other two registrations, Cubicle says that Rubik's had "affirmatively and falsely represented" to the USPTO in its trademark applications that it was using those trademarks in commerce to identify the source of unrelated goods, such as animal grooming preparations, dietary supplements, gemstones or backpacks.

In trying to obtain these two trademark registrations, Cubicle says that Rubik's applications "perpetrated a fraud" on the USPTO.

"Notwithstanding the fraud perpetrated on the USPTO, Rubik's now wields the [registered mark] to anticompetitive effect by suing puzzle cube sellers such as Cubicle," the company said in the complaint, adding that the registration was issued after "material omissions" of fact.

The suit, seeking a declaratory judgment that Cubicle's products don't infringe any trademarks, came days after Rubik's Brand dropped an infringement case it had filed against Cubicle. Because the case was only dismissed without prejudice, Cubicle says it's worried that it will be refiled.

In the new suit, Cubicle also asked the court to cancel other trademark registrations on the design, saying they were both functional and generic.

"Owing to the flooding of competing cube products into the market, consumers do not recognize Rubik's as the sole source of puzzle cubes," the company wrote on Friday. "That is, Rubik's puzzle cube design has come to refer to puzzle cubes themselves rather than to the source of puzzle cubes."

Cubicle's complaint also included accusations of antitrust violations, saying Rubik's Brand wielded its trademark registrations to "stifle competition through unfounded trademark infringement actions."

The Rubik's Cube, created in 1974 by Hungarian professor Ernő Rubik, is one of the best-selling toys of all time. The design was once protected by a number of patents in both Europe and the U.S., but all have since expired.

In the years since, Rubik's has turned to trademark law. The company has fought a number of battles in Europe in recent years, and filed an **infringement suit** against Duncan Toys Co. and Toys R Us in August over look-alike puzzle cubes.

On Tuesday, attorneys for Cubicle said those trademarks were built on fraud.

"We think the trademark portfolio by Rubik's is entirely invalid and procured by fraud," Maurice Ross, counsel for Cubicle, said to Law360 on Tuesday. "We think that there is substantial validity to these claims, and we intend to aggressively pursue them."

A representative for Rubik's did not immediately respond to a request for comment Tuesday.

Cubicle is represented by Maurice Ross of Barton LLP.

Counsel information for Rubik's was not immediately known Tuesday.

The case is Cubicle Enterprise LLC v. Rubik's Brand Ltd., case number 1:18-cv-00963, in the U.S. District Court of the Southern District of New York.

--Additional reporting by Bill Donahue. Editing by Jack Karp.