

## GOING OVER THE TOP AT DISNEYLAND: UNFAIR UNION TACTICS IN “THE HAPPIEST PLACE ON EARTH”

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Disneyland is known as “The Happiest Place On Earth.” But UNITE HERE Local 11, the Union that represents the park’s 2,100 hotel employees, is not in a happy place. For close to three years now, it has been bargaining over a new labor contract. During that time, the union has staged protests and walk-outs, had its members engage in a week-long hunger strike and gone on a one-day quickie strike. But no matter what the union has done to force the issue, no new labor agreement has been reached.

So last month, the union resorted to a new tactic – one that was intended to scare families away from the park and to hurt Disney’s business. It backfired on the union and may actually expose it to legal attack and an award of damages.

### HOW LOW CAN THEY GO?

On October 15, 2010, thousands of guests headed to Disneyland. They were there to enjoy themselves and to attend “Mickey’s Halloween Party.” They were met by Local 11 representatives *dressed as Disney characters* who handed out flyers bearing the image of an ominous hooded grim-reaper-like character and the headline, “**Keep Your Children Close!**”

The flyer warned that “**Places like Disneyland are magnets for pedophiles,**” noting that “[t]he Anaheim Police were called to Disneyland 64 times from 2005-2010 to investigate sex offenses” and that “[a]s of August 20<sup>th</sup>, there are 266 Registered Sex Offenders in Anaheim including 23 offenders in the zip code that Disneyland is located in.” The flyers also then offered parents tips for keeping children safe.

After public opinion rallied around Disney and turned against the union's tasteless scare tactics, a union spin doctor sought to recast public perception, claiming that the flyer had had nothing to do with the pending labor dispute and that the flyer was merely "a service from UNITE HERE." But news reports of what the union did before its thinly-veiled smear campaign and the information it had access to suggest otherwise. Indeed, these reports show that the Union's circular was fraught with misinformation and half truths – all presumably known to be false and intended to place Disney in a damaging light with the objective of advancing the Union's interests at the bargaining table.

Unions are accorded broad latitude when it comes to advancing their economic interests. Indeed, anyone familiar with labor relations knows that union organizing and collective bargaining are no-holds-barred, contact sports. But there are still limits on what a union can do. Several recent court cases help define what some of those limits are. If the facts reported in the media are true, these cases suggest that what Local 11 did at Disneyland may have crossed the line.

For example, in 2006, a Northern California jury returned a verdict against UNITE HERE, finding that the union had committed libel, trade libel, intentional interference with prospective economic relations, and unfair business practices by mailing a postcard to consumers containing false claims about the cleanliness of linens used by Sutter hospitals. At the time of the mailing, the union was engaged in a national campaign to organize the non-union laundry workers of one of Sutter's linen vendors. As part of that campaign, the union asked Sutter to meet with its representatives to discuss the dispute, warning that the hospital could face service interruptions if it continued to do business with the vendor and failed to protect the union's interests.

When the hospital refused to meet, the Union sent out postcards to current and former patients and to women of childbearing age which stated "Reports have surfaced that . . . the laundry service utilized by Sutter does not ensure that 'clean' linens are free of blood, feces, and harmful pathogens." However, no such "reports" existed. Based on these facts, the jury awarded Sutter \$17.3M.

Ultimately, this award was overturned on appeal due to the improper instructions the trial court gave to the jury. But even on appeal, the court held that a union cannot just make things up or ignore the truth of what it says to the public about an employer and that it can and will be liable when it is shown by clear and convincing evidence that a union issued a defamatory statement knowing of its falsity or with reckless disregard of whether it was true or not.

## **OTHER WAYS OF FIGHTING BACK**

Additionally, some states have enacted statutes that are intended to protect consumers and to promote fair competition in commercial markets by prohibiting fraudulent business practices and unfair or deceptive advertising. These can apply to unions. For example, in California, those protections are found in the state's Unfair Competition Law (UCL). The reach of this law is extremely broad. Among other things, it prohibits all persons from engaging in any fraudulent business act or making any "unfair, deceptive, untrue or misleading" advertising.

Thus, this law prohibits not only false advertising, but also any statement directed at the consuming public which, although true, is either actually misleading or has a capacity, likelihood or tendency to deceive or confuse the public. Unlike common-law torts, the UCL does *not* authorize an award of damages, but it does allow courts to issue prohibitory injunctions banning such unlawful advertising in the future and restitution orders directing a defendant to disgorge any and all gains it may have obtained as a result of unlawful conduct.

Borrowing a page out of one of Disney's very early movies, Pinocchio, the Union's nose is no doubt much longer today than it was on October 14. But more importantly, employers who, like Disney, are the victims of a false union-propaganda attack may not need to grin and bear it. They may have ways of fighting back.

A union that makes damaging and defamatory statements to consumers or financial stakeholders about an employer, knowing that those statements are false or making them with reckless disregard for whether they are true or not, can be held liable for defamation and be on the hook for substantial damage awards. Likewise, union statements found to be "fraudulent" or "unfair, deceptive, untrue or misleading" may violate California's UCL (and other state statutes like it) and, thus, be enjoined and cause a union to make restitution.