



## **Conclusory, Bare Bones Complaint Not Protected by Anti-SLAPP**

The Massachusetts Appeals Court recently affirmed the Superior Court's denial of an anti-SLAPP motion to dismiss in a trade secret case, where the defendant's counterclaims were expressly based on the filing of the complaint. In *Gillette Co. v. Provost*, the Gillette Company ("Gillette"), sued several former employees, alleging that they misappropriated Gillette's trade secrets and other confidential information for purposes of developing a wet-shaving razor for their new employer, defendant ShaveLogic, Inc. ("ShaveLogic"). ShaveLogic counterclaimed for interference with business relations and violation of Chapter 93A based on its assertion that Gillette had brought its complaint solely as a bad faith anti-competitive act against ShaveLogic. Gillette moved to dismiss the counterclaims pursuant to the anti-SLAPP statute. The Superior Court denied this motion, and the Appeals Court affirmed.

The Appeals Court found that the record in the Superior Court was sufficient to permit a finding that Gillette's petitioning activity – its lawsuit against ShaveLogic and others – was devoid of any reasonable factual support. The complaint contained "only conclusory allegations" regarding misappropriation and was "bare-bones." The Appeals Court also noted that the misappropriation allegations were based on concepts that had been in the public domain for many years. The Appeals Court held that there was also sufficient evidence to permit a finding that ShaveLogic suffered actual injury as a result of Gillette's lawsuit, including the loss of potential investors and marketing and distribution partners.

The Appeals Court also rejected the litigation privilege as a bar to ShaveLogic's counterclaims because those counterclaims were based on Gillette's overall *conduct* in using a baseless lawsuit to prevent competition, not based on any particular *statements* in Gillette's complaint. The Appeals Court agreed with the Superior Court's statement that "ShaveLogic was complaining not about defamatory remarks but more about abuse of process – a claim plainly not subject to dismissal on the grounds of any privilege." The *Gillette* decision is a highly unusual situation. Courts rarely recognize litigation conduct

as a basis for affirmative counterclaims.



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