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Media Contact:  
Jenny Gregorcyk, TateAustinHahn  
(512) 344-2037  
[jgregorcyk@tateaustinhahn.com](mailto:jgregorcyk@tateaustinhahn.com)



## **FEDERAL COURT OF APPEALS REVERSES DECISION IN BOSE CASE, REVISES *MEDINOL* TRADEMARK FRAUD STANDARD**

AUSTIN, Texas – In what observers are calling the most closely watched trademark case of the year, the U.S. Court of Appeals for the Federal Circuit recently clarified the required standard to cancel a trademark registration for fraud. The court essentially adopted the position advocated by the American Intellectual Property Law Association (AIPLA), which was represented by two attorneys from the Austin, Texas law firm Pirkey Barber.

The case, *In re Bose Corporation*, was the first in which the Federal Circuit reviewed the trademark fraud standard established by the United States Patent and Trademark Office in the 2003 administrative decision *Medinol v. Neuro Vasx, Inc.* The *Medinol* opinion, and some 20 subsequent decisions applying it, had been the focus of intense scrutiny by the trademark bar because the new standard made it much easier to cancel trademark registrations on the basis of fraud.

In the *Bose* opinion, the Federal Circuit found that the *Medinol* line of cases improperly lowered the required proof of fraud from an intent to deceive to simple negligence. The ruling means that trademark owners – and the attorneys who represent them – no longer need to fear that they will be stripped of their valuable trademark registration rights due to simple but honest mistakes.

Pirkey Barber's William G. Barber, AIPLA second vice president, and Susan J. Hightower appeared on the brief for the AIPLA, which received permission from the Federal Circuit to participate in the case as *amicus curiae* ("friend of the court"). Hightower also argued the case on behalf of the AIPLA, a national bar association of more than 17,000 members, primarily lawyers engaged in private and corporate practice, in government service, and in the academic community.

### **About Pirkey Barber**

Pirkey Barber is one of the few firms in the United States specializing exclusively in the field of trademark, copyright, and unfair competition law. The firm's lawyers have represented clients large and small in hundreds of trademark cases, mostly in federal courts, across the United States. They have also represented clients in many contested matters before the Trademark Trial and Appeal Board of the United States Patent and Trademark Office and in domain name disputes under ICANN's Uniform Dispute Resolution Policy. Many clients are Fortune 500 companies, but others are universities and small businesses. Pirkey Barber counsels these clients on all aspects of trademark and copyright law, including trademark clearance, registration and litigation.

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