

# Breaking Bonds: How False Advertising Claims Create Broad Cracks in Jurisprudence and Business Relationships

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## I. INTRODUCTION

In the windshield repair industry, partnerships between suppliers and service providers are naturally common.<sup>1</sup> Such was the case with Ultra Bond, Inc. (Ultra Bond) and Safelite Solutions, LLC (Safelite).<sup>2</sup> Ultra Bond supplied service providers with bonding resin, and Safelite would use similar products to fix windshields.<sup>3</sup> The cracks in this relationship started forming when Safelite allegedly made representations to consumers and insurance companies alike that jeopardized Ultra Bond’s profits.<sup>4</sup> Ultra Bond filed suit for damages caused by false advertising under the Lanham Act and Safelite subsequently filed a counterclaim for misappropriation of trade secrets.<sup>5</sup> While most of the parties’ claims were resolved without issue, the Sixth Circuit’s final judgment on Ultra Bond’s claim opened the door for consumers to play a larger role in false advertising suits moving forward.<sup>6</sup> Such a ruling may have an impact on advertising practices across the Circuit’s jurisdiction.

## II. BACKGROUND AND PROCEDURAL HISTORY

Ultra Bond enjoys a sizable share of the windshield repair market; its bonding resin products have a stellar reputation amongst service providers and

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<sup>1</sup> *About*, ULTRA BOND, <https://www.ultrabond.com/about> [https://perma.cc/RJJ4-UYK4] (last visited Feb. 25, 2024).

<sup>2</sup> *Campfield v. Safelite Grp., Inc.*, 91 F.4th 401, 406 (6th Cir. 2024).

<sup>3</sup> *Id.* at 407.

<sup>4</sup> *Id.* at 408.

<sup>5</sup> *Id.* at 407–09.

<sup>6</sup> *Id.* at 412.

consumers alike.<sup>7</sup> Safelite, however, is a dominant force in the service end of the industry.<sup>8</sup> Its chokehold on the market is so significant that it has the ear of car insurance companies, to the point that providers will base coverage on Safelite's recommendations.<sup>9</sup> For years, Ultra Bond was happy to align itself with Safelite as a natural ally. However, Safelite began to draw Ultra Bond's ire after its adherence to an outdated policy started to cost Ultra Bond a significant portion of its sales.<sup>10</sup>

Like any specialized industry, windshield repair creates periodic reports to update industry standards.<sup>11</sup> Safelite, however, holds a unique position in the trade by virtue of its dominance.<sup>12</sup> Thus, when it created the "dollar bill rule," a six-inch limit on windshield crack repair, the rest of industry followed.<sup>13</sup> In 2007, however, a research group determined that service providers could safely repair cracks up to fourteen inches, more than double the six-inch limit Safelite set earlier.<sup>14</sup> Safelite cosigned the report, but continued to signal to both customers and insurance companies that a six-inch limit on crack repair was safest.<sup>15</sup> It kept its "dollar bill rule" in both its standard advertisements and brochures handed to customers and insurance companies.<sup>16</sup>

While it is nice to think it was simply staying true to its name, Safelite may have had other reasons for capping its windshield repairs to six inches. Aside from being a catchy phrase, the "dollar bill rule" allows Safelite to recommend a more expensive alternative to windshield repair: windshield replacement.<sup>17</sup> Not only is this option more expensive for consumers, but it is also more lucrative for Safelite.<sup>18</sup> Safelite thus exerted its influence over car insurance providers by ensuring they would not cover windshield repairs over six inches and instead steer car owners towards replacement.<sup>19</sup>

Ultra Bond naturally felt this arbitrary industry standard was costing it money and sued Safelite under the Lanham Act, alleging that Safelite's false advertising proximately caused it economic harm.<sup>20</sup> Section 43(a) of the Lanham Act provides that any person harmed by false advertising can sue for

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<sup>7</sup> *Ultra Bond Customer Reviews*, ULTRA BOND, <https://www.ultrabond.com/ultra-bond-windshield-crack-repair-customer-reviews#:~:text=Very%20good%2C%20excellent%20quality.,the%20quality%20of%20the%20product> [https://perma.cc/JS4S-2EAK] (last visited Feb. 25, 2024).

<sup>8</sup> *Campfield*, 91 F.4th at 407.

<sup>9</sup> *Id.* at 407–08.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 407.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 408.

<sup>14</sup> *Campfield*, 91 F.4th at 407.

<sup>15</sup> *Id.* at 408.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 407–08.

<sup>20</sup> *Campfield*, 91 F.4th at 408.

damages.<sup>21</sup> Safelite countersued for misappropriation of trade secrets, both parties were granted summary judgment, and both parties cross-appealed.<sup>22</sup>

### III. PROXIMATE CAUSATION

On appeal, the Sixth Circuit considered four grants of summary judgment and overturned two of the four. The most impactful was Ultra Bond's Lanham Act claim.<sup>23</sup> Notably, the judgment turned on whether the ads' influence on consumer behavior could be part of the proximate cause of the plaintiff's harm. The court began by reiterating the requirements to prevail on a Lanham Act claim.<sup>24</sup> Ultra Bond needed to establish five elements to create a question of fact, but the court hinged its reversal on causation.<sup>25</sup>

The standard for Lanham Act claims hinges on proximate cause.<sup>26</sup> The Sixth Circuit relied heavily on *Lexmark International, Inc. v. Static Control Components, Inc.* to establish that a plaintiff could show proximate cause of harm indirectly.<sup>27</sup> Thus, influencing consumers could serve as an "intervening step" between the defendant's actions and the plaintiff's harm without rendering the damages "too remote" to establish proximate cause.<sup>28</sup> This determination was important, because Ultra Bond's claim hinged on consumer action.<sup>29</sup>

The court noted that its reliance on *Lexmark* only worked if it read the decision broadly.<sup>30</sup> *Lexmark* expanded the causation standard to allow for indirect harm,<sup>31</sup> but in that case, the false advertising financially harmed a manufacturer, directly causing it to buy fewer components from the supplier alleging the harm.<sup>32</sup> In other words, consumers were not the "intervening step" in *Lexmark*.<sup>33</sup> The court determined that the *Lexmark* court did not limit its decision to a single fact pattern, however, and applied it to Ultra Bond's claim.<sup>34</sup> Because Ultra Bond's evidence "support[ed] the causal relationship between Safelite's statements and decreased demand for Ultra Bond products," it established enough to create a legitimate question of fact for a jury to determine whether Safelite had made harmful false statements.<sup>35</sup> Relying heavily on

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<sup>21</sup> 15 U.S.C. § 1125(a)(1)(b).

<sup>22</sup> *Campfield*, 91 F.4th at 408–09.

<sup>23</sup> *Id.* at 410–13.

<sup>24</sup> *Id.* at 411.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Campfield*, 91 F.4th at 412.

<sup>28</sup> *Id.* at 412–13.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 413.

<sup>31</sup> *Id.*

<sup>32</sup> *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 140 (2014).

<sup>33</sup> *Campfield*, 91 F.4th at 412–13; *Lexmark*, 572 U.S. at 140 (2014).

<sup>34</sup> *Campfield*, 91 F.4th at 413.

<sup>35</sup> *Id.* at 412.

*Lexmark*, the Sixth Circuit reversed and remanded Ultra Bond's Lanham Act claim.<sup>36</sup>

#### IV. TOO BROAD A CRACK?

Allowing the behavior of deceived consumers to be used to show proximate cause of damages sets an interesting signal to production companies with regards to their advertising practices. There is a concern that the ruling creates too wide of an opening for Lanham Act claims, one that Justice John Bush articulated in his partial dissent.<sup>37</sup> Partially concurring and partially dissenting, Justice Bush pointed to the cracks in the majority's reading of *Lexmark*, held together by what he believed to be an overbroad interpretation of the decision.<sup>38</sup> Justice Bush expressed concern that the Sixth Circuit was broadening the causation standard to a problematic degree in allowing consumer action into the inquiry.<sup>39</sup> Allowing consumers to bridge the gap between Safelite's wrongdoing and Ultra Bond's harm "require[d] several increasingly attenuated assumptions that stretch[ed] beyond the proximate-cause standard in *Lexmark*."<sup>40</sup> Where in *Lexmark* a lost sale from a manufacturer directly resulted in a lost sale to the plaintiff, Ultra Bond was asking the court to assume that, if not for Safelite's false statements, every customer would have opted to fix their windshield rather than replace it.<sup>41</sup> This, understandably, concerned Justice Bush enough to dissent on the issue.

While Justice Bush's concerns are valid, those within the industry seem to understand the implications of Safelite's false advertising quite well.<sup>42</sup> Even back in 2015, when Ultra Bond initially filed suit, neutral parties within the industry demonstrated a strong understanding of the connection between Safelite's statements and consumer choice.<sup>43</sup> Ultra Bond itself framed its case not only as justice for itself, but as justice for the millions of consumers who Safelite "deceived... into unnecessary replacements."<sup>44</sup> Ultra Bond's ability to prevail on a Lanham Act claim could serve as a win for consumers. Individual consumers have little recourse with respect to false advertising that leads to unnecessary spending. With the Sixth Circuit opening the door for aggrieved industry rivals to use consumer influence as an element of proximate cause,

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<sup>36</sup> *Id.* at 413.

<sup>37</sup> *Id.* at 417–19.

<sup>38</sup> *Id.* at 417–18.

<sup>39</sup> *Id.* at 417–19.

<sup>40</sup> *Campfield*, 91 F.4th at 418.

<sup>41</sup> *Id.* at 418–19.

<sup>42</sup> Postman, *Windshield Replacement Scandal: Safelite Sued by Rich Campfield*, GLASTEK (Sep. 1, 2015), <https://glastek.com/windshield-replacement-scandal-safelite-sued-by-rich-campfield/> [https://perma.cc/G2MB-35PQ].

<sup>43</sup> *Id.*

<sup>44</sup> *U.B. v Safelite Summary Judgement Motion*, ULTRA BOND, <https://www.windshieldrepairgrandjunction.com/safelite-grand-junction-lawsuit> [https://perma.cc/APW9-TB4G] (last visited Feb. 25, 2024).

companies have less incentive to deceive consumers knowing a rival company may be able to take action against them.

## V. CONCLUSION

*Campfield v. Safelite, Inc.* started as a mess of a case, with multiple claims and a convoluted fact pattern. One claim, however, led to a decision that may have lasting implications on the way companies choose to advertise. In reversing the decision to dismiss Ultra Bond's Lanham Act claim, the Sixth Circuit opened the door to a broader standard on false advertising lawsuits moving forward. As a result, companies may think twice before deceiving consumers if they believe a competitor or industry peer may be adversely affected by it. While there are concerns that this may be too broad a scope, consumers come away from this decision as indirect winners.