Launching Site or Other Advertising Alone is Not Service Mark ‘Use’

For the first time, the Federal Circuit directly addressed whether the advertising or offering of a service, without the actual provision of the service, constitutes use in commerce for a service mark, reports McCarter & English in a paper written by Jonathan Short and Carissa L. Rodrigue.

The case is Couture *v. Playdom, Inc.*, No. 2014-1480 (Fed. Cir. Mar. 2, 2015).

“In affirming the Trademark Trial and Appeal Board’s (TTAB) cancellation of the service mark PLAYDOM, the court held that the mark was void *ab initio* because the associated services were not rendered as of the use-based application’s filing date even though the mark owner had used the mark to advertise the services by launching a website, and that such advertising alone does not constitute use in commerce,” the report says.

Read the story.