

EXERCISE

FACTS SECTION OF A BRIEF

Background

Your client, a small family-run business, has been sued by plaintiffs alleging they were sold certain products fraudulently represented by your client as being made by a high-end luxury brand. To prove fraudulent misrepresentation, plaintiffs must show your client knowingly made a false representation with intent to induce reliance, plus justifiable reliance and damages.

Plaintiffs allege that your client used signs with confusing logos to misrepresent the products. They allege as well that your client confused customers with social media posts tagging the high-end brand and naming them as a product partner. Your client maintains that anyone would know these were not made by the high-end brand, and in fact, the products themselves contained disclaimers saying they were not. Plaintiffs dispute the existence of such disclaimers. Also, your client's social media is run by the family's teenage daughter, who often tags "product partners" she hopes that her family business will work with one day.

You're moving to dismiss plaintiffs' complaint because the plaintiffs haven't sufficiently alleged facts proving each of the elements of the claim. You're working on a draft of the facts section of the brief this week.

Instructions

Come prepared to discuss these questions:

- Will you address the disagreement about the disclaimers in the facts section? Why?
- How might you tie some of these facts into a broader theme for the brief?
- How would you handle the social media posts?
- What tone should you take in your drafting?