

Stauffer v. Brooks Brothers, Inc.,
___ F. 3d ___, 2010 WL 3397419 (Fed. Cir. Aug. 31, 2010)

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Raymond Stauffer appealed the decision of the United States District Court for the Southern District of New York dismissing Stauffer's false marking *qui tam* action for lack of standing. The Federal Circuit reversed the district court's decision concluding that Stauffer did not have standing and remanded back to the district court for determination of whether Stauffer failed to allege in the complaint Brooks Brothers' intent to deceive the public with sufficient specificity to meet the heightened pleading requirements for claims of fraud.

Brooks Brothers manufactures and sells men's bow ties. Some of the Brooks Brothers bow ties contain a mechanism marked with U.S. Patent Nos. 2,083,106 and 2,123,620, which expired in 1954 and 1955, respectively. Stauffer brought a *qui tam* action under 35 U.S.C. § 292 alleging that Brooks Brothers had falsely marked its bow ties with these two expired patent numbers.

Brooks Brothers moved to dismiss Stauffer's complaint for lack of standing and for failure to allege an intent to deceive the public with sufficient specificity to meet the heightened pleading requirements for claims of fraud. The district court granted Brooks Brothers' motion, concluding that Stauffer lacked standing. The district court also held that Stauffer had not sufficiently alleged that the United States had suffered an injury in fact from Brooks Brothers' false marking.

The Federal Circuit found that a *qui tam* plaintiff can establish standing based on the United States' implicit partial assignment of its damages claim to "any person," as § 292 states. The court found that Stauffer has standing because a *qui tam* provision operates as a statutory assignment of the United States' rights, and the assignee of a claim has standing to assert the injury in fact suffered by the assignor. In passing § 292, which prohibits deceptive patent mismarking, the court indicated that Congress determined that such conduct is harmful and should be prohibited. The court further found that because the government would have standing to enforce its own law, Stauffer, as the government's assignee, also has standing to enforce § 292.

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