

Calif. Jury Clears Samsung In Talent Co.'s \$243M 'S10' TM Suit

By **Craig Clough**

Law360 (March 17, 2023, 7:37 PM EDT) -- A California federal jury found on Friday that Samsung did not infringe the trademark of talent management company S10 Entertainment through its Galaxy S10 smartphone, taking roughly an hour to reach the verdict after a six-day trial.

David J.F. Gross of Faegre Drinker Biddle & Reath LLP, who represents Samsung Electronics Co. Ltd. and Samsung Electronics America Inc., told the jury during his closing argument earlier in the day that there is no overlap between the marketplace of S10 Entertainment — which represents musicians and songwriters such as Normani and Anitta — and Samsung's smartphone marketplace.

Trademark law allows for "peaceful coexistence" between similar marks if they don't directly compete, Gross said, adding, "And that's what we have in this case."

Gross told Law360 after the trial that he is "pleased with the verdict" but declined further comment. Counsel for S10 Entertainment declined to comment on the verdict.

Andrew D. Skale of Mintz Levin Cohn Ferris Glovsky and Popeo PC, who represents S10 Entertainment, told the jury during his closing argument that his side presented a survey finding a net confusion of 26.7% among consumers believing the talent management company is connected in some way to Samsung.

"More importantly, what did you hear from Samsung with regard to their own survey?" Skale asked before filling the courtroom with an audio track of crickets chirping. "Crickets. You didn't hear anything from them. No survey."

Skale later added that Samsung didn't do its own survey "because they knew the results would not be good for them."

But the jury ultimately appeared to side with Gross' statement during his closing argument when he said, "We sell mobile phones, they manage talent."

S10 Entertainment was seeking up to \$243 million in the trial.

Samsung premiered its first Galaxy S smartphone in 2010, and with each new update added a number, such as the Galaxy S2, Galaxy S3 and so on, according to evidence presented to the jury.

S10 Entertainment started doing business in 2017, and its CEO, Brandon Silverstein, testified that he named the company S10 because his birthday is Sept. 10, and that he was unaware at the time Samsung sold smartphones. S10 Entertainment filed a trademark application in 2018 for "S10" and the mark was registered in 2019, the same year Samsung premiered its Galaxy S10.

The lawsuit was filed in 2021. During the trial, a damages expert argued S10 Entertainment could be owed up to \$243 million from the disgorgement of Samsung's profits from sales of the S10 smartphone, which achieved over \$8 billion in net sales.

S10 Entertainment's 2021 complaint says even though it has a federally registered trademark for "S10," defendants Samsung Electronics Co. Ltd. and Samsung Electronics America Inc. decided to release a line of smartphones known as the Samsung Galaxy S10, S10e and S10+ anyway. The music space was one of Samsung's marketing focuses for those Galaxy products, having partnered with companies like Spotify for its promotion, the complaint said.

People in the music industry, such as artists and executives, started confusing the two companies with each other, and S10 Entertainment said Instagram users tagged its account with photos of the Samsung phones, according to the complaint.

In August 2021, Samsung filed a counterclaim for trademark infringement that seeks the cancellation of S10's federal trademark registration.

Two executives in the music industry, Tim Blacksmith of music publishing company Tim & Danny Music and Joshua Klein of TKG Business Management, testified early in the trial that they were confused when they saw ads for the Galaxy S10, thinking it was linked somehow with S10 Entertainment.

Gross suggested their testimony was compromised because they are friends of Silverstein. He also hammered Silverstein for filing a lawsuit he said just doesn't make sense.

Singers Normani and Anitta both had inked marketing deals with Samsung, as did Silverstein's mentor, Jay-Z, Gross said. Silverstein's career continued to skyrocket since the Galaxy S10 was released, with him even being named to Forbes magazine's "30 Under 30" list, he said.

Even after the Galaxy S10 was released, Silverstein never said anything to Samsung about any trademark infringement as he continued to communicate with the company on behalf of his clients, and even received commissions based on marketing deals with Samsung, Gross said.

"Do we really think that he thought there was actual confusion?" Gross asked.

It was only after Silverstein felt slighted by Samsung that he sued, Gross said, calling the lawsuit a "complete surprise" and "literally inconsistent with everything Brandon Silverstein had done," Gross said.

S10 Entertainment is represented by Andrew D. Skale, Matthew Hurley, Michael R. Graif, James J. Thomson and Oliver Ennis of Mintz Levin Cohn Ferris Glovsky and Popeo PC.

Samsung is represented by Christopher J. Burrell, David J.F. Gross, Katlyn M. Moseley and James R. Steffen of Faegre Drinker Biddle & Reath LLP, and Howard D. Ruddell of Moore Ruddell LLP.

The case is S10 Entertainment and Media LLC v. Samsung Electronics Co. Ltd. et al., case number 2:21-cv-02443, in the U.S. District Court for the Central District of California.

--Additional reporting by Bonnie Eslinger. Editing by Michael Watanabe.

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