

# Update: Second Circuit Affirms Dismissal of Lanham Act Claims Based on Allegedly False UL Certification

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Last fall, we covered the Southern District of New York’s [dismissal](#) of Board-Tech Electronic Company’s Lanham Act false advertising claim. Based on its own internal testing, Board-Tech alleged that light switches sold by its competitor, Eaton Corporation, were falsely labeled as complying with an Underwriters Laboratories (“UL”) certification standard. However, the district court found that Board-Tech had not plausibly alleged that Eaton’s labelling was false because the product was in fact certified by UL.

Earlier this month, the Second Circuit affirmed, holding that Board-Tech failed to plausibly allege that Eaton’s placement of the “UL 20” mark on its product labelling was literally false. The mark merely communicated that the product was certified by UL, which Board-Tech conceded was true.

Board-Tech contended that the use of the “UL 20” mark necessarily implied, falsely, that any given product bearing the mark would meet the UL 20 standard, but the Second Circuit disagreed: “The use of the UL 20 mark on Eaton’s products represents that a sampling of those products complied with UL standards when UL tested the products. It does *not* represent that every single unit will perform the same way when tested by different entities.” To sustain a claim under the false-by-necessary-implication theory of literal falsity, the Court explained, Board-Tech would have needed to show that UL no longer considered Eaton’s products to be compliant with the UL 20 standard.

Watch this space for any further developments.

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