



PRE-EMPTIVE STRIKE: Mark Ingber, the N.J. company's lawyer, sought a declaratory judgment after the California company sent him notice of intention to sue.

No Cause in Trademark Suit

Ad Magic v. Advertising Magic: A federal court jury in Newark cleared a New Jersey advertising company of infringing the trademark of a California concern with a similar name and business that had demanded \$450,000 in damages.

The jury found on Jan. 20 that the name Ad Magic Inc. and its Web site, admagic.com, used by a Newton company, did not cause confusion with Advertising Magic Inc. of Walnut Creek, Calif., a larger enterprise. Both companies sell products inscribed with customers' logos and ad messages.

The N.J. company's lawyer, **Mark Ingber** of **Ingber and Gelber** in Millburn, says he sued for a declaratory judgment after the California company sent him a notice of intention to sue unless \$450,000 was paid.

Ingber says he presented evidence at trial before U.S. District Judge **Stanley Chesler** that 90 percent of Ad Magic's

business comes from the sale of customized playing cards and poker chips, while only 1 percent of Advertising Magic's business comes from such products. He says the evidence showed that both companies operated at the same time without knowledge of each other until 2005.

Advertising Magic's lawyer, **David Dorey** of **Blank Rome** in Cherry Hill, did not return a call but he said in a trial memorandum that his client's federal trademark is six years older than Ad Magic's, which wasn't obtained from the U.S. Patent and Trademark Office until the litigation started.

Dorey argued that Ad Magic's use of the domain name admagic.com is diverting business from the site, advertisingmagic.com, that his company uses.

Ingber says insurers paid Ad Magic's \$138,000 litigation cost, but that he will ask the court to order reimbursement from the defendant.

— **By Henry Gottlieb**