



THINK FORWARD

Peace, Love & Trademarks

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July 23, 2015

The Federal Circuit recently issued a decision that could be very helpful to trademark applicants. On July 20, 2015, the Federal Circuit vacated and remanded the Trademark Trial and Appeal Board's ("TTAB") holding that Juice Generation's mark for "juice bar services" was confusingly similar to GS Enterprises' ("GS") marks for "restaurant services."

In rejecting the TTAB's holding, the Federal Circuit held that the TTAB inadequately assessed the strength of GS's marks in light of several third-party marks that Juice Generation identified.

The Federal Circuit explained that widespread third party use of similar terms to those in the opposer's mark can indicate that consumers are able to distinguish between the parties' marks based on different aspects of the marks. In other words, third party use tends to show that the opposer's mark may be relatively weak. If that is the case, applicant's mark can come closer to the opposer's mark without creating a likelihood of confusion and thereby improperly invading what amounts to its comparatively narrower range of protection. Here, Juice Generation identified several third-party marks, including PEACE LOVE AND PIZZA, PEACE LOVE AND POPCORN, and PEACE, LOVE & CUPCAKES, all registered for use in connection with related food and restaurant services.

The Federal Circuit went on to note that common terms used in third-party registrations can indicate how the terms are used in ordinary parlance and can serve as a de facto dictionary. Additionally, the Federal Circuit specifically requested that on remand the TTAB consider whether the phrase PEACE & LOVE carries a suggestive or descriptive connotation in the food service industry, such as relating to 60s or 70s-themed restaurant services.

The reason this case is so interesting is that applicants with marks containing common terms may be able to use the Federal Circuit's holding to overcome likelihood of confusion refusals at the USPTO by referencing numerous similar third party uses. When applying for a trademark with common terms, this case could allow applicants to argue that the cited marks are entitled to a more narrow scope of protection. Third party use could provide powerful evidence that when consumers encounter the applied-for mark and the cited references, consumers will identify and distinguish the marks based on the differences in the marks and not rely on the common terms.

Contact Us

If you have any questions about the Court's decision or how it may impact your business, please contact one of our [Trademark Attorneys](#).