

Ninth Circuit Revives Trademark Dispute After Monster Energy Refused to Throw in the Towel

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The Ninth Circuit recently revived Monster Energy Company’s (“Monster Energy”) trademark and trade dress dispute against a company that markets camping equipment under the mark 4MONSTER.

Monster Energy owns the well-known MONSTER word mark, related “M Claw” logos, and the green-and-black trade dress used with these trademarks (the “MONSTER Marks”). The MONSTER Marks are widely recognized in connection with Monster Energy’s popular energy drinks but are also used by Monster Energy and its licensees on a variety of merchandise products including t-shirts and other apparel and, most

importantly for present purposes, bags and towels.

Defendant 4Monster markets textile-based camping products including towels, backpacks, blankets and robes. It uses the word mark 4MONSTER in connection with these products and the 4MONSTER mark appears in a variety of colors on these products, including green-and-black, blue, yellow, purple, and orange.

Monster Energy sued 4Monster in the U.S. District Court for the Southern District of California for trademark infringement, trade dress infringement, and related unfair competition claims. Both parties moved for summary judgment on all claims and the District Court granted summary judgment in favor of 4Monster, finding no reasonable jury could find a likelihood of confusion. On appeal, the Ninth Circuit reversed and remanded, finding that several of the likelihood of confusion factors could weigh in Monster Energy's favor.

It was undisputed that the MONSTER Marks are both conceptually and commercially strong when used in connection with energy drinks. However, the District Court found that Monster Energy failed to show any evidence of commercial strength in connection with non-beverage-related items, such as merchandise. This was because Monster Energy's evidence of marketing expenditures, revenues, and surveys in support of mark strength all related to the MONSTER brand as a whole. However, Monster Energy did not introduce any evidence specific to its use of MONSTER for merchandise.

Monster Energy's evidence was also vague as to what branded merchandise items are actually sold to consumers, rather than distributed as promotional items. The District Court found this vague evidence to be unhelpful in showing the strength of the MONSTER Marks. It also found that it suggested that the parties' goods are in fact not related or competing because 4Monster's products are sold direct to consumers online whereas it remained unclear where or how Monster Energy's merchandise is sold. Ultimately, the District Court found that all but one of the confusion factors favored 4Monster and granted summary judgment.

Undeterred, Monster Energy appealed to the Ninth Circuit, which disagreed. It first noted that the MONSTER Marks are conceptually distinctive and entitled to the highest degree of trademark protection. As for commercial strength, the widespread distribution of Monster Energy's merchandise, whether sold or otherwise, is sufficient for a reasonable juror to find that the MONSTER Marks have marketplace recognition in connection with merchandise.

The Ninth Circuit also held that a jury could find that the parties' goods are similar or complementary. It noted that MONSTER-branded towels and bags, and 4MONSTER-branded towels and backpacks are similar in use and function. MONSTER energy drinks could be complementary to 4MONSTER-branded towels and backpacks because Monster Energy markets its energy drinks as "adjacent to extreme sports and outdoor adventure activities." Compounding the likelihood of confusion was the fact that the parties' goods are low-cost, such that consumers are unlikely to exercise a high degree of care in their purchasing decisions.

The Ninth Circuit found that other likelihood of confusion factors, including the marketing channels used by the parties and 4Monster's intent in selecting the mark, do not favor a likelihood of confusion. Still, enough of the factors weighed in Monster Energy's favor and summary judgment was inappropriate. Monster Energy will now have another chance to pursue its claims in the District Court. We'll be monitoring this case.