

Protecting the Pint: Rebel Creamery Appeals Trade Dress Judgment

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(Source: Memorandum & Order, *Van Leeuwen Ice Cream LLC v. Rebel Creamery LLC*)

It is back out of the freezer and into court for *Van Leeuwen Ice Cream LLC v. Rebel Creamery LLC*, after Rebel submitted an appeal to the United States Court of Appeals for the Second Circuit and filed for Chapter 11 bankruptcy protection.

In July 2026, Brooklyn-based ice cream company Van Leeuwen secured an injunction and \$23,785,000 judgment for trade dress infringement against Utah-based Rebel Creamery in the United States District Court for the Eastern District of New York. The subject of dispute: ice cream pint packaging.

Trade dress encompasses the overall design and appearance that makes a product identifiable to consumers. Van Leeuwen ascribed the relevant trade dress to its “classic dairy line” — a set of thirty-seven ice cream flavors, excluding limited edition and vegan flavors — defining it by reference to four “elements”:

- (a) cardboard monochromatic pints with matching monochromatic lids;
- (b) use of a primarily pastel color palette and/or pastel tinted hues;
- (c) black script typeface lettering with an exaggerated capital letter appearing across the front of the ice cream pint with additional descriptive writing in black lettering; and
- (d) an overall minimalistic design aesthetic.

Van Leeuwen sued Rebel for trade dress infringement and other related claims under federal and New York law. The trial court found the evidence “left no doubt that Rebel infringed and diluted Van Leeuwen’s trade dress and did so intentionally.”

In a trade dress infringement case, the plaintiff must define its claimed trade dress with specificity and demonstrate a “consistent overall look” across the product line. The court determined Van Leeuwen satisfied both requirements. Its asserted trade dress elements were sufficiently objective and precisely identified to put Rebel on notice of the claimed trade dress, and the classic dairy line maintained “a recognizable and consistent look.”

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Rebel argued that Van Leeuwen deployed its trade dress inconsistently, pointing to several classic dairy flavors that were not sold in pastel-colored pints, including Mint Chip, Black Cherry Chip, Lemon Poppy Seed Muffin, and Raspberry Layer Cake. The court was unpersuaded. It noted that the non-pastel containers represented only a small portion of the classic dairy line and were not sold simultaneously. Further, the green Mint Chip pint was the product of a mistake that was quickly corrected to the original pastel color, and the lemon and raspberry flavors had since been discontinued. Because Van Leeuwen defined its trade dress as “primarily” pastel, the court concluded these outliers did not undermine the product line’s overall consistency. Rebel’s argument that Van Leeuwen’s use of non-pastel and non-monochromatic color schemes in its limited-edition flavors also failed because those pints fell outside the specified scope of the classic dairy line.

In determining a likelihood of confusion between the sparring scoops, the court emphasized the pint packaging’s high degree of similarity, as both containers used pastel colors, were monochromatic from the lid to the pint, used black script font for their logo, with Van Leeuwen’s “L” and Rebel’s “R” extending under the rest of the mark name, and favored minimalistic surface area designs. The only distinctions between Van Leeuwen and Rebel’s packaging were Rebel’s keto elements: the black circle stating the number of net carbs or net grams of sugar, and the language on the lid stating “keto, full fat, lactose free.”

The court was also persuaded by Van Leeuwen’s argument that consumers and grocery store employees experienced actual confusion. While actual confusion is not required to establish likelihood of confusion, it is particularly compelling when present. Van Leeuwen introduced anecdotal evidence from a confused consumer who wrote to Rebel reporting that her husband accidentally purchased Rebel ice cream instead of Van Leeuwen when she sent him to the store. The company also introduced evidence of employee confusion revealing that grocery store employees were mistakenly applying Rebel price tags to Van Leeuwen pints and intermingling the products in freezer displays.

The cherry on top of Van Leeuwen’s actual confusion argument was a “*Squirt*” survey conducted by its expert, which yielded a net confusion rate of 34.3%. In a *Squirt* survey, participants are shown an array of trademarks or trade dresses and asked questions about whether they believe the items in question originate from the same corporate source. In Van Leeuwen’s survey, participants viewed Rebel’s packaging alongside Van Leeuwen and several other brands before answering questions about perceived connections between Rebel and a designated brand. Rebel challenged the survey’s methodology, but the court ultimately found it reliable, citing a proper participant pool, sound controls, and appropriate open-ended questioning. In trademark cases, a 15% net confusion rate is generally considered sufficient to demonstrate actual confusion. Van Leeuwen’s 34.3% result more than doubled that benchmark, adding significant weight to its infringement claim.

Van Leeuwen sought a permanent injunction requiring redesign and an accounting of Rebel’s profits and an award of \$36.4 million. In the end, the trial court granted the

injunction but reduced the award by 33% to \$23,785,000 to account for Rebel sales attributable to demand for keto and better-for-you ice cream instead of product packaging.

Despite the judgment, this legal sundae is not over yet. Rebel filed its appeal on August 12, 2026, then filed for bankruptcy two days later on August 14, 2026. [Subscribe](#) to the TMCA Blog to get the scoop on future case updates.