



All shook up

BrewDog in the doghouse over an Elvis mark

O/291/17ELVIS JUICE (Opposition), UK IPO, 23rd June 2017

Key points

- The average consumer of beer may be more considered nowadays than in the past, but will not deploy above-average levels of care and attention
- A famous name such as Elvis is more likely to be considered distinctive for goods that would not traditionally be used in a commemorative manner than for traditional memorabilia
- The HO considered that the reputation and inherent distinctiveness of BREWDog were insufficient to remove the risk of indirect confusion between BREWDog ELVIS JUICE and ELVIS

BrewDog Plc, a Scottish craft brewery known as much for its quirky branding as for its beers, applied to register ELVIS JUICE and BREWDog ELVIS JUICE in respect of beer, ale and, in the case of the latter, a range of class 32 goods. Both applications were opposed by ABG EPE IP LLC (ABG), a brand management company linked to Elvis Presley's estate, on the basis of its EU trade mark registrations Elvis and Elvis Presley for class 32 goods, and related class 35 retail and wholesale services. ABG pursued its opposition under s5(2)(b) of the Trade Marks Act 1994, dropping its initially pleaded s5(3) grounds.

Analysis

The goods all being identical or similar, the analysis focused on the marks, and in particular on the balance between the various elements in each composite mark. ABG argued that JUICE was generic of liquids, including alcoholic drinks, and/or might suggest that the liquid held some special power, while ELVIS was highly distinctive. BrewDog countered that JUICE was purely fanciful for the goods, and that the average consumer would see ELVIS JUICE simply as a funny name. Interestingly, presumably in response to BrewDog's argument that ELVIS was of low distinctiveness due to its commemorative function in respect of Elvis Presley, ABG appeared to question the extent to which the name Elvis holds any meaning in this day and age. (Fans will be pleased to read that the Hearing Officer (HO) firmly quashed any suggestion that the King's star may be waning.)

The HO found that ELVIS was of average inherent distinctiveness (ABG had not filed evidence of use), whereas JUICE had "some mild allusive characteristics". Although consumers would consider the two words to form a single unit, ELVIS would be the slightly more prominent of the two. No matter how (im)perfect the recollection of the average consumer, ELVIS JUICE would likely be regarded



as a sub-brand or brand extension of ELVIS. Therefore, there was a risk of indirect confusion on the part of consumers between ELVIS and ELVIS JUICE.

Reviewing the case law on composite marks, the HO reached the same conclusion for BREWDOG ELVIS JUICE, despite the relative reputation and inherent distinctiveness of BrewDog's house mark, and the fact that BREWDOG retains in the composite mark an independent distinctive role roughly equal to that of the ELVIS JUICE element.

The HO stated that: "It is important to bear in mind when considering these marks that even though Elvis may have a concept to aid recall, one is still looking at a brand, not the person himself." However, he considered Elvis to be an uncommon name, with Elvis Presley being the most famous Elvis. Use of Elvis therefore provided a conceptual hook for the average consumer in the contested applications, as well as in the earlier marks.

Protest act

It remains to be seen whether BrewDog will appeal. In the meantime, however, BrewDog's co-founders have changed their names to Elvis by deed poll in protest at the idea "that a name could be confined to a single, late celebrity".

This article was previously published by CITMA and can be found [here](#).

Authors: [Melanie Stevenson](#)

Need advice?

Carpmaels & Ransford is a leading European IP firm based in London. For more information about our firm and our practice, please visit our website at: www.carpmaels.com.

This information provides a summary of the subject matter only. It should not be acted on without first seeking professional advice.

Carpmaels & Ransford LLP is regulated by the Intellectual Property Regulation Board (IPREG).

Copyright © Carpmaels & Ransford LLP 2017