

Court Finds Gatorade’s Use of “Sports Fuel Company” Fair Use

(June 18, 2018) Gatorade Company’s slogan “Gatorade the Sport Fuel Company” does not infringe on Sportfuel, Inc.’s trademark “Sportfuel” because Gatorade’s use merely describes the types of products sold and does not signify the source of the products, a federal judge ruled.

Sportfuel, Inc., a Chicago-based sports nutrition and wellness consulting firm founded in 1993, registered the mark “Sportfuel” in 2008 for food nutrition consulting and in 2015 for sports drinks. Gatorade, a Pepsico, Inc. subsidiary, in 2015 began a “self-described effort to ‘rebrand itself as ‘Gatorade—The Sports Fuel Company’” by using the slogan in a nationwide media campaign and on some product packages. It was aware of the Sportfuel registrations. Gatorade obtained a trademark for “Gatorade The Sports Fuel Company” in 2016 but had to disclaim the exclusive right to use “The Sports Fuel Company.” Sportfuel sued for infringement of its marks and Gatorade countersued to cancel Sportfuel’s mark.



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The trial court granted summary judgment for Gatorade, stating Gatorade’s use of the mark was a “fair use” because Gatorade did not use the mark as a trademark but rather used Sports Fuel to describe its goods and services. Specifically, the court said the fact that the term Gatorade “appears more prominently than the rest of the slogan reduces the likelihood that Gatorade is using ‘Sports Fuel’ as an indicator of a source.”

Moreover, the court said, when Gatorade obtained its trademark registration, “Gatorade specifically disclaimed the exclusive right to use the phrase ‘The Sports Fuel Company,’ which the Patent and Trademark Office found to be an unregistrable component of the mark because ‘it merely describes an ingredient, quality, characteristic, function, feature, purpose, or use of [the] applicant’s goods and/or services.’”

Because the court found the use was “fair use,” it said it did not have to address whether Gatorade’s use caused a likelihood of confusion with the Sportfuel mark.

Balough Law Offices researches and files trademark applications for its clients. The research includes whether a mark may be generic, merely descriptive, or confusingly similar to other marks.

Sportfuel, Inc. v Pepsico, Inc., and The Gatorade Company, N.D. Ill. No. 16 C 7868, filed June 14, 2018.

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