

JUICE GENERATION, INC. v. GS ENTERPRISES LLC, Appeal No. 15-1853 (Fed. Cir. July 20, 2015). Before Newman, Reyna, and Taranto. Appealed from Trademark Trial and Appeal Board.

Background:

Juice Generation applied for registration of a mark consisting of the phrase “PEACE LOVE AND JUICE” and a design for use with its juice bar services. GS Enterprises owns several federal trademark registrations containing the phrase “PEACE & LOVE” for use with restaurant services and opposed Juice Generation’s application for registration claiming a likelihood of confusion between the two marks. The TTAB sustained the opposition and refused to register Juice Generation’s mark, finding that because the marks, services, trade channels, buyers, and purchasing conditions are similar, there is a likelihood of confusion between the marks. Juice Generation appealed.

Issue/Holding:

Was the TTAB’s finding of a likelihood of confusion between Juice Generation’s and GS’s marks correct? No, vacated and remanded.

Discussion:

The Federal Circuit’s review focused on two aspects of the TTAB’s finding that Juice Generation’s mark is similar to GS’s marks.

First, the Federal Circuit considered whether the TTAB adequately assessed the strength or weakness of GS’s marks in light of evidence of similar third-party marks in use for similar services. Such evidence is relevant to show that a mark is relatively weak and therefore entitled to only a narrow scope of protection. The Federal Circuit found that the TTAB had not adequately considered the many examples in the record of third-party use of similar marks containing “peace” and “love” followed by a third product-identifying term for food services. Moreover, the TTAB never inquired whether or to what degree evidence of third party registrations indicates that “PEACE & LOVE” carries a suggestive or descriptive connotation in the food service industry.

Second, the Federal Circuit considered whether the TTAB properly considered Juice Generation’s mark as a whole. When comparing marks, the commercial impression of a mark is derived from the whole mark, not from its elements separated and considered in detail. The Federal Circuit determined that the TTAB’s finding that “JUICE” should be given less emphasis than the phrase “PEACE LOVE” was appropriate. However, the Federal Circuit found it was inadequate for the TTAB to then conclude that “PEACE & LOVE” and “PEACE LOVE AND JUICE” are “virtually identical” without further explanation of the comparison of the marks in their entireties. In particular, the TTAB’s analysis did not consider whether the three-word phrase in Juice Generation’s mark might convey a distinct meaning from the two-word phrase used by GS. While the Board may afford more or less weight to particular components of a mark, it must still view the mark as a whole, which the TTAB failed to do.