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## Coca-Cola's Trademark Challenge Fizzles Out

**Meenaxi Enterprise, Inc. v. The Coca-Cola Company, No. 21-2209 (Fed. Cir. 2022)**

By: Edward Runyan & Victoria Hanson | July 5, 2022

On June 29, 2022, the United States Court of Appeals for the Federal Circuit (“CAFC”) reversed the Trademark Trial and Appeal Board’s (“TTAB”) decision to cancel the U.S. registrations owned by beverage company Meenaxi Enterprise, Inc. because Coca-Cola, the challenger, did not have statutory standing.

This case involves the use of two trademarks in two different markets: THUMS UP and LIMCA (the “marks”) in the U.S. and India. Coca-Cola has operated in India since 1950, and it purchased the Indian marks THUMS UP and LIMCA (which had been used since the 1970s) in 1993, and they were considered “well-known” there. In 2008, Meenaxi began selling beverages bearing the marks to Indian grocers in the U.S. and sought to register the marks with the TTAB in 2012 after completing a clearance search.

In 2016, Coca-Cola sought to cancel Meenaxi’s registration under Lanham Act §14(3) which provides that a person may bring a petition to cancel a registration if the registered mark is being used “so as to misrepresent the source of the goods.” The TTAB originally found that the marks should be cancelled, and that Coca-Cola had statutory standing because it owned well-known registrations of the marks in India, and third parties had imported and sold those beverages in the U.S. since 2005 (before Meenaxi’s use began). The TTAB also noted that Coca-Cola could be harmed because Meenaxi had used its registrations to block importation of Coca-Cola’s THUMS UP and LIMCA beverages into the U.S. Further, the TTAB found that Meenaxi had intentionally picked logos and slogans that were nearly identical to those used by Coca-Cola.

The CAFC reversed, finding that Coca-Cola did not have statutory standing under 15 U.S.C. § 1064 to challenge Meenaxi’s trademark registrations because Coca-Cola did not experience lost sales or reputational injury in the U.S. While Coca-Cola presented limited evidence of importation and availability of its products bearing the marks prior to Meenaxi’s use, and provided vague statements of future plans to market products in the U.S., the CAFC concluded that this did not establish damages from lost sales because those third-party sellers were not authorized U.S. distributors and the future plans were too nebulous to be the basis for a Lanham Act claim. Moreover, the court pointed out that copying a foreign mark is not evidence of U.S. reputation, and as such did not support the assertion that Coca-Cola had experienced a reputational injury. Accordingly, the Court held that Coca-Cola did not have statutory standing to contest the THUMS UP and LIMCA marks in the U.S., and Meenaxi’s marks were revived.

This case demonstrates that even the most famous brands must establish an injury (in this case, reputational injury in the U.S.) in order to have standing to challenge a trademark. Moreover, absent use by the trademark holder of a famous foreign mark in the U.S., that trademark holder lacks standing to challenge a third party’s U.S. registration of that mark even when gray market goods which originate from the trademark holder enter the U.S. and are sold by third parties in the U.S.