IRWIN IP
INTELLECTUAL PROPERTY LITIGATION
IP CASE OF THE WEEK

Are Hard Seltzers Considered Beer? The Jury is Still Out.

Cerveceria Modelo De México, et. al, v. Cb Brand Strategies, Llc, et. al, 2024 WL 1253593 (2d Cir. Mar. 25, 2024)

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A license agreement with broad terms might seem like a good idea, but it could turn into something that you later regret. On March 25, 2024, the Second Circuit ("the Court") affirmed that a licensee did not violate a trademark license agreement for "beer" products by selling hard seltzer products under the same trademark.

Cervecería Modelo de México, S. de R.L. de C.V. and Trademarks Grupo Modelo, S. de R.L. de C.V. (collectively, "Modelo") entered into a perpetual trademark license agreement with CB Brand Strategies, LLC, Crown Imports LLC, and Compañía Cervecera de Coahuila, S. de R.L. de C.V. (collectively, "Constellation") for Constellation to use Modelo's trademarks to make and sell "beer" inside the United States. The license agreement defined "beer" as "beer, ale, porter, stout, malt beverages, and any other versions or combinations of the foregoing, including non-alcoholic versions of any of the foregoing." Recently, Constellation started to sell Corona Hard Seltzer and Modelo Ranch Water (collectively, "Corona Hard Seltzer") using Modelo's trademarks. Corona Hard Seltzer is a flavored carbonated drink that derives its alcohol content from fermented sugar. Modelo sued Constellation alleging that sales of Corona Hard Seltzer violated the trademark license agreement because Modelo believed a sugar-based hard seltzer did not constitute "beer" under the license agreement. The issue of what "beer" meant was sent to a jury who determined that Modelo failed to establish that hard seltzer was not beer as defined in the license agreement. Modelo appealed.

On appeal, Modelo argued that under the plain meaning and dictionary definitions of "beer" or "malt beverages" that Corona Hard Seltzer could not be a beer or malt beverage because the seltzer was not flavored with hops and contained no malt. The Court acknowledged that the plain and ordinary meanings of "beer" and "malt beverages" would exclude Corona Hard Seltzer, however, the definition of "beer" allowed for "versions" of beer and malt beverages. Modelo argued "versions" could only mean beverages sharing similar characteristics to beer or malt beverages. Constellation argued that the definition of "beer" also included "non-alcoholic versions" and that a beverage without the common elements of beer, such as malt or hops, would be covered under the agreement. The Court held both parties' definitions of the term "versions" were plausible and that the definition of "beer" was ambiguous as to whether it included Corona Hard Seltzer. Therefore, the Court affirmed the jury's determination that "beer," at least as used in the license agreement, included hard seltzers as the jury was not limited to plain and ordinary meaning of the term and was allowed to consider the parties' intent when the contract was negotiated.

IP owners need to be careful using license agreements with broad definitions, like "any other versions" used here, because those definitions may later include items the IP owner did not intend to include at the time of the agreement. If there is any uncertainty in the scope of an IP contract, the ambiguity may be used against the IP owner in the future.