

Revving Up The Trade Dress Standard: Articulation First

Cardinal Motors, Inc. v. H&H Sports Protection USA Inc., No. 23-cv-7586 (2d Cir. Feb. 6, 2025)

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On February 6, 2025, the Second Circuit held that the “articulation requirement” for a trade dress complaint—a pleading requirement under which plaintiffs must articulate with precision the components making up their claimed trade dress—is independent of and must be satisfied prior to evaluating the elements of trade dress infringement (distinctiveness, likelihood of confusion, and non-functionality). The court found that the district judge erred when it dismissed Cardinal’s Third Amended Complaint (“TAC”) for failing to precisely articulate the distinctiveness of its trade dress.

Plaintiff-Appellant Cardinal Motors designs motorcycle helmets and licensed “The Bullitt” to Bell Sports, Inc.—one of the largest manufacturers of motorcycle helmets—and Bell marketed it as its flagship motorcycle helmet. Subsequently, H&H Sport Protection USA began selling a motorcycle helmet called the “Torc T-1.”



The Bullitt



Torc T-1

On September 24, 2020, Cardinal filed a lawsuit against H&H alleging trade dress infringement and unfair competition of its “The Bullitt” helmet. After having two complaints dismissed without prejudice for failure to satisfy the pleading requirements for its trade dress claims, Cardinal’s TAC presented two alternative articulations of its trade dress, a “General Trade Dress” and a “Detailed Trade Dress,” and advanced separate trade dress infringement counts based on each. H&H again moved to dismiss. The district court found that Cardinal’s description failed to satisfy the articulation requirement because it “failed to allege the distinctiveness” of the trade dress and dismissed the claim relying on the General Trade Dress without determining whether Cardinal had plausibly alleged the elements of trade dress infringement. It summarily concluded that the count relying on the Detailed Trade Dress also failed the articulation requirement “for the same reasons” because it rested “in substantial part on the General Trade Dress,” and dismissed the remaining state law count for lack of jurisdiction. Cardinal appealed.

The Second Circuit found that the district court erred by conflating the articulation requirement with the distinctiveness element of Cardinal’s trade dress claim, which instead focuses on whether the trade dress has inherent or acquired distinctiveness. The court admitted that the Second Circuit and district courts within the circuit had likewise improperly conflated the requirement. The court noted that other Circuits delineate the articulation requirement from the elements and made clear that the Second Circuit was adopting that same approach, stating: “Whether, once a plaintiff has met the articulation requirement, it has sufficiently pleaded the three elements of an infringement cause of action – distinctiveness, likelihood of confusion, and nonfunctionality – is a different question.” As such, a court must decide if a party has explained what the features of the trade dress are before it determines whether that trade dress has inherent or acquired distinctiveness and whether it meets the other trade dress infringement elements.

This decision clarifies that the trade dress must be articulated first before determining the distinctiveness of the trade dress. This decision provides guidance that trade dress should be articulated with specificity as to features, but that pleading distinctiveness does not have this specificity requirement.