

## Your “Chicken Scratch” May Be Confusing

*In Re R.S. Lipman Brewing Co., LLC, 2025 WL 1099603 (Fed. Cir. Apr. 14, 2025)*

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Be careful when selecting a name for your product, otherwise you might find yourself cooked at the United States Patent and Trademark Office (“PTO”)! Enlisting an expert trademark attorney to oversee your trademark application, especially when there is a similar mark in a related field that is already registered, will increase your chances that your trademark will be granted registration. The Federal Circuit (“CAFC”) recently affirmed the Trademark Trial and Appeal Board’s (“TTAB’s”) rejection of the mark “Chicken Scratch” (the “proposed mark”) for beer because the proposed mark resembled an identically registered “Chicken Scratch” mark (the “cited mark”) for restaurant services. Specifically, the CAFC upheld the TTAB’s determinations that the cited mark was not conceptually weak, the proposed and cited marks provided similar commercial impressions, and that there was sufficient evidence to establish that the beer and restaurant services were related.



In 2018, R. S. Lipman Brewing Company, LLC (“Lipman”) sought to register the mark “Chicken Scratch” for beer with the PTO. An examining attorney at the PTO rejected Lipman’s mark because the proposed mark was likely to be confused with the cited mark for restaurant services based on the similarity of the marks, “the related nature of beer and restaurant services, and the overlap of the relevant trade channels.” The TTAB affirmed the examining attorney’s rejection. Lipman appealed to the CAFC arguing that the cited mark was conceptually weak, the marks did not impart similar commercial impressions, and the goods/services were not similar to warrant that the marks would likely be confused by consumers.

First, the CAFC held that the TTAB’s decision that the proposed mark was suggestive and not conceptually weak was correct. The TTAB properly acknowledged that the cited mark’s website indicated its “chicken [was] made from scratch,” evidence that the proposed mark could coexist with a similar mark for distilled spirits, and reliance on dictionary definitions indicating that “chicken scratch” means “bad handwriting” supported the conclusion that the cited mark should have a normal scope of protection.

Second, the CAFC held that there was sufficient evidence for the TTAB to hold that the proposed and cited marks impart “similar commercial impressions.” Lipman argued that because the proposed mark is shown with a “chicken pecking at the ground” thereby suggesting that the same chicken feed ingredients are used to brew Lipman’s beer, while the cited mark is used in a restaurant menu to feature chicken dishes, the two marks must provide different commercial impressions. The CAFC held that Lipman provided no evidence that consumers would think the marks provided different commercial impressions. Additionally, both marks were identical in sight, sound, and appearance which weighed in favor that the marks would likely cause confusion.

Finally, the CAFC rejected Lipman’s argument that the TTAB should have provided “something more” than the fact that the marks are identical marks based on the CAFC’s previous decision in *In Re Coors* which allowed a beer trademark to be registered alongside a similar mark for restaurant services. In contrast to the applicant in *In Re Coors*, the CAFC held that Lipman failed to provide evidence comparing the number of breweries providing restaurant services to the total number of United States restaurants.

In light of this decision, businesses should be conscious when choosing a new mark for their goods and services. It is important to first conduct a trademark search to determine whether there are any similar marks in related fields that could likely cause confusion in the minds of consumers. Hiring a skilled trademark attorney to handle your trademark prosecution and to distinguish your mark from any registered marks will likely save your business money from later having to change your brand in the future. For example, after seven years of attempting to receive a trademark, Lipman will either have to rebrand or risk being sued for infringement.