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Trademark Litigation

Clyde Shuman

MillerCoors Avoids Preliminary Injunction on Packaging

A federal judge in California has denied a motion for preliminary injunction by craft brewer Stone Brewing Co., that would have required brewing giant MillerCoors LLC to immediately pull packaging for its “Keystone Light” brand of beer that emphasizes the word “Stone.” In *Stone Brewing Co. LLC v. Molson Coors Brewing Co. et al.*, case number 3:18-cv-00331 (S.D. Cal.), the court found that, although plaintiff Stone Brewing had a “moderately strong” possibility of eventually prevailing in its trademark lawsuit, MillerCoors’ new packaging for its “Keystone” brand was not causing the irreparable harm necessary for the drastic remedy of a preliminary injunction.

Dispute Arises from Updated “Stone” Emphasis on Packaging

By way of background, Stone Brewing, a San Diego-based craft brewer, has sold its artisanal Stone® beers nationwide for over two decades. Stone Brewing has been using its registered STONE® for 20 years, and the mark has been declared incontestable by the Trademark Office. MolsonCoors is a multinational beer conglomerate operating in the United States through its subsidiary, MillerCoors. MillerCoors has

been selling “Keystone”-brand lager beer (just one of its dozens of brands) since 1989. “Keystone” is sold as a subpremium beer, in cans. The name refers to a popular ski resort town founded in the 1970s in Colorado. Since 1989, Keystone cans have been prominently featured the KEYSTONE® mark. MillerCoors undertook efforts to “refresh” its KEYSTONE image by introducing an updated can and package design, in or around April 2017. The “refreshed” can design separated “KEY” and “STONE” onto separate lines, and its “refreshed” packaging emphasized “STONE” rather than “KEYSTONE.” An August 2017 advertising campaign included the tagline “Hunt the STONE.” Since the “refreshed” can and package design, Keystone Light has gone from MillerCoors’ worst, to its best-selling beer of the entire Keystone line.

At this same time, Stone Brewing noticed a discernable drop in its sales as purchasers were allegedly confused by Keystone’s new can and packaging. For example, in December 2017, a consumer reached out to Stone Brewing to inquire about the brewery’s new “STONE LITE” matters, in many areas of the country, STONE® and KEYSTONE® use identical distribution and marketing channels.

Stone Brewing filed its lawsuit in February 2018, alleging trademark infringement; false designation of origin; trademark dilution; and unfair competition. Three months later, Stone Brewing moved for a preliminary injunction.

Court Applies Likelihood of Confusion Factors

Turning to the preliminary injunction factors, the Court, using the likelihood of confusion factors from *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348-49 (9th Cir. 1979), found that Stone Brewing’s trademark infringement claim was moderately strong. The Court, however, appeared skeptical about whether consumers would confuse the two brands: “What Stone conveniently fails to mention is that a consumer picking up, or even just looking at a Keystone can see the full name Keystone Light (twice), as well as the bright-yellow house mark of Coors, printed on the can as well. Moreover, as reflected by the Stone tweet that Miller cites in its response, Stone was well aware of this fact.”

More importantly, the Court found that Stone Brewing had not shown a likelihood of irreparable harm absent an injunction. By contrast, the Court found that a preliminary injunction would cause substantial harm to MillerCoors. Per the Court, “On the other hand, Miller does allege that it would be harmed by the court’s granting of a preliminary injunction against it because, for example, it would have to change the cans and packaging of the challenged ‘Keystone Light’ product that it has been using for well over a year.”

The case now proceeds to discovery and an eventual trial on the merits, where Stone Brewing still could obtain permanent injunctive relief.

Clyde Shuman is a Partner in the Litigation Group of Pearl Cohen Zedek Latzer Baratz LLP. He has more than 20 years of experience as a litigator, including litigating IP cases in district courts throughout the country and in the U.S. International Trade Commission.

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