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Trademark case: AK Futures LLC v. Boyd Street Distro, LLC, USA

Thomas Long (Wolters Kluwer Legal & Regulatory US) · Wednesday, September 7th, 2022

The 2018 Farm Bill—which carved hemp out of the definition of marijuana—made products containing the Delta-8 THC isomer legal, which meant marks for the products could be federally protected.

A manufacturer of e-cigarette and vaping products was entitled to a preliminary injunction barring a wholesaler from selling counterfeit versions of the manufacturer’s “Cake”-branded e-cigarette and vaping products containing delta-8 tetrahydrocannabinol (“delta-8 THC”), the U.S. Court of Appeals in San Francisco has held. A federal district court correctly determined that the manufacturer was likely to succeed on the merits of its trademark claims. The wholesaler did not contest that it had engaged in counterfeiting, but it argued that the manufacturer could not own a valid trademark in connection with its products. However, the district court held and the appellate court affirmed that the 2018 Agricultural Improvement Act (the “Farm Act”) legalized the manufacturer’s delta-8 THC products. Even though delta-8 THC had psychoactive properties (albeit milder than those of the banned delta-9 THC compound), it met the requirements for legal hemp. That is, it was a derivative, extract, or cannabinoid originating from the cannabis plant and containing “not more than 0.3 percent” delta-9 THC (AK Futures LLC v. Boyd Street Distro, LLC, May 19, 2022, Fisher, M.).

Case date: 19 May 2022

Case number: No. 21-56133

Court: United States Court of Appeals, Federal Circuit

A full summary of this case has been published on [Kluwer IP Law](#).

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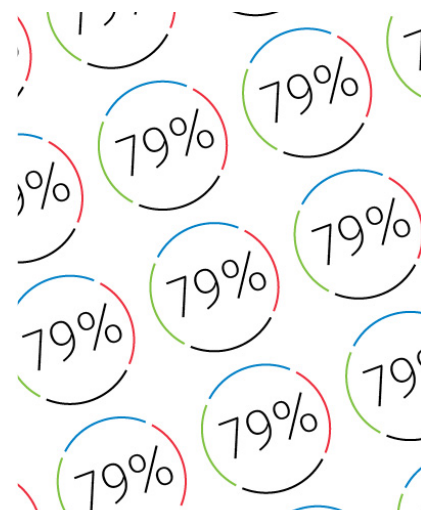
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