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# Kluwer Trademark Blog

## Trademark case: Lodestar Anstalt v. Bacardi & Company Limited., USA

Robert B. Barnett (Wolters Kluwer Legal & Regulatory US) · Saturday, August 13th, 2022

In a case of first impression, the Ninth Circuit ruled that the Madrid Protocol gave a European company priority of right in a trademark even without prior use in commerce.

The Ninth Circuit agreed with the California district court that Bacardi's use of BACARDI UNTAMEABLE for rum did not as a matter of law infringe Lodestar's UNTAMED mark for distilled spirits because no likelihood of confusion existed, given that consumers would encounter the marks differently in the marketplace, the marketing efforts were concentrated in different media, and no evidence of actual confusion existed. Prior to finding for Bacardi, the Ninth Circuit concluded in a case of apparent first impression that Liechtenstein-based Lodestar had a valid right of priority over Bacardi in the U.S.—and thus a valid right to pursue a trademark infringement claim—through the Madrid Protocol as adopted by the Lanham Act, even though Lodestar may not have used the mark in the U.S. until after Bacardi had begun using its mark. In addition, even though the Ninth Circuit affirmed dismissal for lack of likelihood of confusion, it also concluded that the district court erred in adopting a rule excluding any consideration of a senior user's post-infringement use of the mark and erred in certain aspects of its analysis, including how the court weighed strength of the mark and Bacardi's intent (*Lodestar Anstalt v. Bacardi & Company Limited.*, April 21, 2022, Collins, D.).

Case date: 21 April 2022

Case number: No. 19-55864

Court: United States Court of Appeals, Ninth Circuit

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

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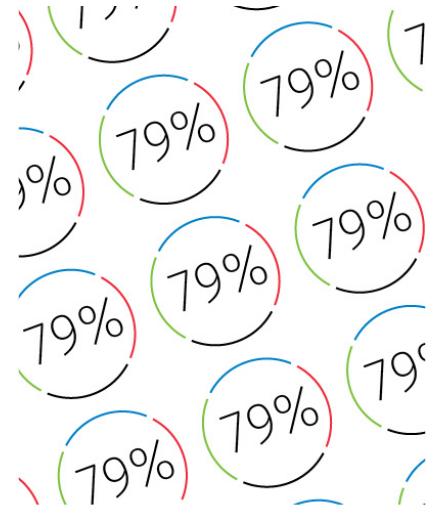
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