

The Battle of the Bulls: NBA Fail to Invalidate Pizza Texas Bulls Trade Mark Similar to the Chicago Bulls Logo in the United Kingdom

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The National Basketball Association (NBA) has lost the appeal of its invalidation action against a United Kingdom (UK) trade mark filed by Pizza Texas Bulls Inc (Pizza Bulls) in classes 30, 39, and 43 in *NBA Properties Inc. v. Pizza Texas Bulls Inc* [2023] EWHC 3040 (Ch). Interestingly, the NBA was successful in the European Union (EU) in relation to identical marks under Opposition No B3146352, and prevented the Pizza Bulls mark being registered in the EU.

The NBA filed an invalidity action arguing the Pizza Bulls mark, which features a red bull's head and the word BULLS, was confusingly similar to and took unfair advantage of the reputation of the Chicago Bulls marks (both shown below). The hearing officer rejected the action and the NBA appealed on several points of law.



Decision

The NBA argued that the Chicago Bulls marks are entitled to protection in the UK as the logo is well-known in the UK through its use in the United States (US), Canada, and the EU, and that there exists a likelihood of confusion based on similarity of the marks and the goods and services.

Mrs Justice Smith set out that the degree of similarity of the goods and services was of critical importance to the appeal. The Pizza Bulls mark is registered for a range of pizza, pizza products, and

pizza-related services, and the Chicago Bulls marks are registered for sale of food and beverages (amongst other things).

Mrs Justice Smith here found a fatal flaw in the submissions provided by the NBA was their “*very limited set of evidence*”. Mrs Justice Smith found that the NBA had failed to sufficiently show use of the Chicago Bulls marks for the same goods and services as the Pizza Bulls mark in the UK market, or even in the US market. The NBA only provided “isolated examples” spread over the course of 40 years in the USA, and that there was no evidence of sustained use by the NBA of the Chicago Bulls marks for the promotion of food and beverage sales anywhere other than in their own stadium.

Consequently, Mrs Justice Smith found that use of the Pizza Bulls mark in connection with the sale of food and beverages would not give rise to a likelihood of confusion here in the UK and the Pizza Bulls trade mark registration was upheld.

However, the appeal ground under section 5(3) ground has been remitted back to a new hearing officer for reconsideration. This ground does not require a focus on the degree of similarity between the goods and services. Instead this ground covers whether there is potential for unfair advantage in the use of the Pizza Bulls trade mark based on the reputation of the Chicago Bulls marks. This requires an analysis of the full scope of goods and services connected with the Chicago Bulls marks with a view to determining whether the use and reputation of the Chicago Bulls marks elsewhere (i.e. in the US, Canada, and Europe) has led to the Chicago Bulls marks being well-known in the UK, and whether the average consumer would make a link between the marks.

Conclusion

There is therefore still hope for the Chicago Bulls to successfully invalidate the Pizza Bulls mark and it will be interesting to see whether the new hearing officer’s decision finds in favour of the Chicago Bulls. However, this case is a helpful reminder that appropriate evidence of use must be relied upon and the connection to the UK market be established in order to successfully invalidate a trade mark.

Link to the decision [here](#).

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