

United States Court of Appeals for the Federal Circuit

MEENAXI ENTERPRISE, INC.,
Appellant

v.

COCA-COLA COMPANY,
Appellee

2021-2209

Appeal from the United States Patent and Trademark
Office, Trademark Trial and Appeal Board in Nos.
92063353, 92064398.

Decided: June 29, 2022

RICHARD MANDEL, Cowan, Liebowitz & Latman, PC,
New York, NY, argued for appellant.

HOLLY HAWKINS SAPORITO, Alston & Bird LLP, At-
lanta, GA, argued for appellee. Also represented by KIRK
T. BRADLEY, Charlotte, NC.

Before DYK, REYNA, and STOLL, *Circuit Judges*.

Opinion for the court filed by *Circuit Judge* DYK.

Opinion concurring in the result filed by *Circuit Judge*
REYNA.

DYK, *Circuit Judge*.

The Coca-Cola Company (“Coca-Cola”) distributes a Thums Up cola and Limca lemon-lime soda in India and other foreign markets. Meenaxi Enterprise, Inc. (“Meenaxi”) has distributed a Thums Up cola and a Limca lemon-lime soda in the United States since 2008 and registered the THUMS UP and LIMCA marks in the United States in 2012. Coca-Cola brought cancellation proceedings under § 14(3) of the Lanham Act, 15 U.S.C. § 1064(3), asserting that Meenaxi was using the marks to misrepresent the source of its goods. The Trademark Trial and Appeal Board (“Board”) held in Coca-Cola’s favor and cancelled Meenaxi’s marks. Meenaxi appeals. Because we conclude that Coca-Cola has not established a statutory cause of action based on lost sales or reputational injury, we reverse.

BACKGROUND

I

Coca-Cola began operating in India in 1950. Parle (Exports), Limited of Bombay, India (“Parle”) introduced the Thums Up cola in India in 1977 and the Limca lemon-lime soft drink in India in 1971. Coca-Cola purchased Parle in 1993 and acquired Parle’s Indian registrations of the THUMS UP and LIMCA marks. Coca-Cola’s beverages are available in over 2.6 million retail outlets throughout India. Thums Up cola is also sold in Bangladesh, Oman, Singapore, and the United Arab Emirates, and Limca soda is also sold in Angola, Nigeria, Sri Lanka, Bhutan, Oman, Singapore, and the United Arab Emirates. The Indian High Court of Delhi found in 2014 that the THUMS UP mark was “famous” and “well known” in India, J.A. 3165, 3174, and previously found in 2011 that the LIMCA mark was “well known” in India, J.A. 3256, 3258.

Coca-Cola claims that its Thums Up and Limca beverages have been imported and sold in the United States by third parties who purchased the products in India since at least 2005. Michael Pittman, Marketing Director for Sparkling Brands Platform Innovation at Coca-Cola, stated that authentic “Thums Up and Limca products are resold by third parties in Indian grocery stores, restaurants, and other retail outlets in the U.S.” J.A. 3590 ¶ 15. Shrenik Dasani, Vice President for the Sparkling Category at Coca-Cola India, stated, “It is my understanding that these THUMS UP-branded and LIMCA-branded products are resold in Indian grocery stores around the world, including in the U.S., and that these brands are extremely popular and well-received by consumers in the U.S. . . .” J.A. 3055 ¶ 39. Based primarily on the affidavits of Mr. Pittman and Mr. Dasani, the Board found that there is “an interest in [Coca-Cola’s] goods in the United States by Indian grocers, restaurants and other retail outlets.” J.A. 37.

Meenaxi has been selling beverages to Indian grocers in the United States since 2008 using the THUMS UP and LIMCA marks. Prior to beginning use of the marks in 2008, Meenaxi claims to have searched for the mark in the U.S. Patent and Trademark Office (“USPTO”) database and in several Indian grocers in the United States. The USPTO search revealed an application for the THUMS UP mark was abandoned in 1987 and a registration for the LIMCA mark expired in 1996.

In 2012, Meenaxi sought to register the THUMS UP and LIMCA marks in the United States. It was granted Registration No. 4,205,598 (“598 Registration”) for the THUMS UP standard character mark in International Class 32 for “Colas; Concentrates, syrups or powders used in the preparation of soft drinks; Soft drinks, namely, sodas,” and Registration No. 4,205,597 (“597 Registration”) for the LIMCA standard character mark, also in International Class 32. J.A. 10.

II

On March 8, 2016, Coca-Cola brought a claim under § 14(3) of the Lanham Act to cancel Meenaxi's registrations for misrepresentation of source. Section 14(3) provides:

A petition to cancel a registration of a mark, stating the grounds relied upon, may . . . be filed as follows by any person who believes that he is or will be damaged . . . by the registration of a mark on the principal register[:] . . .

(3) At any time . . . if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used.

15 U.S.C. § 1064.

The Board first addressed Coca-Cola's statutory entitlement to bring a cancellation claim before reaching the merits. Under the statute, Coca-Cola was required to establish that it "believes that [it] is or will be damaged . . . by the registration of [the] mark." *Id.* Under the Supreme Court's decision in *Lexmark International, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 129, 132 (2014), entitlement to a statutory cause of action under the Lanham Act requires demonstrating (1) an interest falling within the zone of interests protected by the Lanham Act and (2) an injury proximately caused by a violation of the Act.

Considering the zone-of-interest prong of the statutory entitlement inquiry, the Board found that Coca-Cola owns registrations for the THUMS UP and LIMCA marks in India and other countries and that these marks are well known in India, command a substantial market share in India, and are imported and sold in the United States by others. The Board further found that "the reputation of [Coca-Cola's] THUMS UP and LIMCA beverages would

extend to the United States, at least among the significant population of Indian-American consumers.” J.A. 26. This was so because Coca-Cola’s THUMS UP and LIMCA marks “likely would be familiar to much of the substantial Indian-American population in the United States.” J.A. 37, 40–41. The Board relied on evidence that the Indian-American population in the United States was over 2.6 million in 2010 and had climbed to over 3.8 million by 2015.

Considering the proximate damage prong of the statutory entitlement inquiry, the Board found that Coca-Cola “reasonably believe[d] in damage proximately caused by the continued registration by [Meenaxi] of THUMS UP and LIMCA,” as Meenaxi’s use of the THUMS UP and LIMCA marks could cause a harm “stemming from the upset expectations of consumers.” J.A. 30. The Board also noted that Meenaxi had used its registrations to block importation of Coca-Cola’s Thums Up and Limca beverages by third parties. Thus, based on these findings and the Fourth Circuit’s decision in *Belmora LLC v. Bayer Consumer Care AG*, 819 F.3d 697 (4th Cir. 2016), the Board found the zone-of-interest and damage prongs of *Lexmark* met.

On the merits, the Board reiterated that Coca-Cola’s THUMS UP and LIMCA marks had reputations that would be familiar to Indian Americans in the United States. And the Board explained that Meenaxi had “admitted knowledge of [Coca-Cola’s] marks,” J.A. 57, based on evidence that (i) Meenaxi admitted it was aware that “THUMS UP was used in India by an Indian company” in the 1970s, J.A. 44 (citing J.A. 2508); (ii) Meenaxi founder Kaushik Gandhi admitted he had tasted a Thums Up soda in India in the 1980s, J.A. 42 (citing J.A. 2651); (iii) Mr. Gandhi admitted he had “tried the Limca product at [his] college’s canteen,” J.A. 48 (quoting J.A. 2652); (iv) Meenaxi President Meenaxi Gandhi admitted she was aware of Thums Up and Limca drinks in India, J.A. 42, 49 (citing J.A. 2939–40); and (v) Meenaxi admitted it knew that

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