

You ain't nothing but a Brewdog! Brewdog meets Elvis in the UK IPO

This was a recent trade mark opposition hearing in the UK IPO. The applicant for registration was Brewdog, the well-known Scottish craft brewer. Brewdog had applied for two trade marks, "ELVIS JUICE" for beer and ale, and "BREWD OG ELVIS JUICE" for beer and various related goods. The opponent successfully opposed these marks on the basis that they were confusingly similar to its earlier "ELVIS" mark also registered for beer, etc.

The hearing officer found that the word "ELVIS" was sufficiently well known and associated with Elvis Presley that most average consumers would conceive of it as referring to him. Even without evidence of acquired distinctiveness for beer, this was enough to give the ELVIS mark an average level of distinctiveness.

In assessing the likelihood of confusion with the "ELVIS JUICE" mark applied for, the hearing officer found that, because the first word ELVIS had an average level of distinctiveness and the second word JUICE was mildly allusive to the liquid being sold, ELVIS was more likely to be the more memorable component of the mark. He considered that the average consumer might suffer direct confusion, i.e. they would assume that the marks were the same. Alternatively, even if the average consumer recalled that the two marks were different, there was a risk that the average consumer would suffer indirect confusion, i.e. they would assume that the ELVIS JUICE mark was from the same or economically linked source as the earlier ELVIS mark.

In relation to the "BREWD OG ELVIS JUICE" mark, the hearing officer found that the mark was comprised of two components, "BREWD OG" and "ELVIS JUICE". While the word BREWD OG had something of a reputation,

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it would not lessen the confusion between "ELVIS" and "ELVIS JUICE" for a significant number of consumers. Accordingly, there was still a risk of indirect confusion.

Counsel for both parties were from **Hogarth Chambers**. **Michael Hicks** acted for the opponent (instructed by Potter Clarkson LLP) and **Amanda Michaels** for Brewdog (Instructed by Lawrie IP).

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