

Battle for the Brands: Penn State v. Vintage Brand

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In a case that could reshape the landscape of apparel merchandising, Penn State University (“Penn State”) sued Vintage Brand LLC (“Vintage Brand”) in a trademark infringement lawsuit in Pennsylvania. At the heart of the dispute is the question of whether Vintage Brand’s use of retro-inspired college logos and imagery on merchandise constitutes trademark infringement or qualifies as a lawful expression under artistic license.

Penn State, one of the largest public universities in the United States, has long relied on licensing its popular logos and emblems as a significant revenue stream. Vintage Brand, a company specializing in retro-inspired merchandise, sells apparel, posters, and other products adorned with designs referencing sports teams and universities, including Penn State.

Vintage Brand no longer offers any products referencing Penn State on its website. However, according to the complaint, Vintage Brand previously offered products featuring the words “Penn State” and similar logos and designs to Penn State’s trademarks. The complaint includes images of Vintage Brand’s products that are alleged to feature designs resembling Penn State’s registered trademarks, for example:



Penn State alleges that Vintage Brand’s products exploit the goodwill associated with its trademarks and mislead consumers into believing the merchandise is officially licensed. Vintage Brand claims that its products are protected under the First Amendment as expressive works and constitute “transformative use.”

This case falls under the Lanham Act, the primary federal statute governing trademarks in the United States, which generally protects brand owners from unauthorized use of their marks that may cause consumer confusion. The court

must determine if these designs are “source identifiers,” signifying Penn State’s endorsement or affiliation, or if they are merely “ornamental,” expressing consumer affinity for the university.

The ultimate outcome of this case may provide clarity on how courts balance the rights of trademark holders with broader uses of marks in merchandising. A decision reinforcing Penn State’s claims may affirm the rights of trademark holders to regulate the use of their marks and maintain control over licensing practices. On the other hand, if Vintage Brand’s arguments prevail, it could lead to a reassessment of how courts view trademarks used in expressive or ornamental contexts.

On November 19, a Pennsylvania federal jury found that Vintage Brand’s products infringed Penn State’s trademarks and ordered Vintage Brand to pay Penn State compensatory damages. Further, the jury found that the Penn State’s trademarks were not aesthetically functional and that the use of the trademarks by Vintage Brand was not nominative fair use. However, trademark experts expect that Vintage Brand will appeal the jury’s verdict. If reversed, the decision in this case may have substantial long-term implications for universities, sports franchises, and other industries, such as entertainment, that rely on trademark licensing, potentially impacting their ability to control the use of their marks in merchandise.

An appeal in this case would go before the United States Court of Appeals for the Third Circuit. Trademark experts expect that regardless of the 3rd Circuit’s ruling, either party may petition the United States Supreme Court for review, given the nationwide implications this case may have on trademark law.

The case is *The Pennsylvania State University v. Vintage Brand LLC et al.*, Cause No. 4:21-cv-01091, pending in the United States District Court for the Middle District of Pennsylvania.

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