

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Multi Time Machine, Inc. v. Amazon.com, Inc.

804 F.3d 930 (9th Cir. 2015) · No. 13-55575 · Decided October 21, 2015

SUMMARY

The Ninth Circuit granted panel rehearing, withdrew its July 6, 2015 opinion, and issued this superseding opinion and dissent. The court affirmed summary judgment for Amazon in Multi Time Machine's Lanham Act trademark-infringement action, holding that Amazon's clearly labeled search results for competing military-style watches were unlikely to confuse a reasonably prudent online consumer. Judge Bea dissented, concluding that a genuine issue of material fact remained concerning initial interest confusion.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Barry G. Silverman; Carlos T. Bea; Gordon J. Quist
JURISDICTION	Federal
DECIDED	October 21, 2015
DOCKET	13-55575
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the Central District of California granting summary judgment in favor of Amazon in a trademark infringement action under the Lanham Act.
STANDARD OF REVIEW	The decision to grant summary judgment in a trademark infringement claim is reviewed de novo, and all reasonable inferences are to be drawn in favor of the non-moving party.
PRECEDENTIAL VALUE	Published
PARTIES	Multi Time Machine, Inc. v. Amazon.com, Inc.; Amazon Services, LLC

TOPICS

trademark infringement trademark law intellectual property standard of review appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Amazon's search results page in response to a search for 'mtm special ops' creates a likelihood of consumer confusion under the Lanham Act, sufficient to survive summary judgment.

HOLDINGS

1. Amazon's search results page does not create a likelihood of confusion because it clearly labels the name and manufacturer of each product offered for sale and includes photographs of the items; no reasonably prudent consumer accustomed to shopping online would likely be confused as to the source of the products. Therefore, the district court's grant of summary judgment in favor of Amazon was proper.

KEY QUOTATIONS

“Because Amazon’s search results page clearly labels the name and manufacturer of each product offered for sale and even includes photographs of the items, no reasonably prudent consumer accustomed to shopping online would likely be confused as to the source of the products.”

“In light of Amazon’s clear labeling of the products it carries, by brand name and model, accompanied by a photograph of the item, no rational trier of fact could find that a reasonably prudent consumer accustomed to shopping online would likely be confused by the Amazon search results.”

“To establish likelihood of confusion, MTM must show that confusion is likely, not just possible.”

“The search results page is unambiguous – not unlike when someone walks into a diner, asks for a Coke, and is told ‘No Coke. Pepsi.’”

FACTUAL BACKGROUND

MTM manufactures and markets watches under various brand names, including 'MTM Special Ops,' for which it holds a federal trademark registration. MTM does not sell its watches through Amazon.com, nor does it authorize its distributors to do so. Amazon.com is an online retailer with a search function. When a shopper searches for 'mtm special ops' on Amazon, the results page displays the search term in the search box and breadcrumb, a 'Related Searches' field, and then a list of products from other brands such as Luminox, Chase-Durer, TAWATEC, and Modus, each clearly labeled with brand name and manufacturer and accompanied by a photograph. No MTM watches are listed; some non-watch items also appear. MTM sued Amazon for trademark infringement, contending the search results page creates a likelihood of initial interest confusion.

PROCEDURAL HISTORY

MTM filed a complaint against Amazon alleging that Amazon's search results page in response to a search for 'mtm special ops' infringed MTM's trademarks. Amazon moved for summary judgment, arguing no use in commerce and no likelihood of confusion. The district court declined to resolve the use-in-commerce issue and granted summary judgment on likelihood of confusion. MTM appealed. The Ninth Circuit initially issued an opinion on July 6, 2015, which was withdrawn; this superseding opinion and dissent were filed on October 21, 2015.

DISPOSITION

affirmed

CASES CITED

- E. & J. Gallo Winery v. Gallo Cattle Co., 967 F.2d 1280 (9th Cir. 1992)
- AMF Inc. v. Sleekcraft Boats, 599 F.2d 341 (9th Cir. 1979)
- Network Automation, Inc. v. Advanced Systems Concepts, 638 F.3d 1137 (9th Cir. 2011)
- Survivor Media, Inc. v. Survivor Prods., 406 F.3d 625 (9th Cir. 2005)
- One Indus., LLC v. Jim O'Neal Distrib., 578 F.3d 1154 (9th Cir. 2009)
- M2 Software, Inc. v. Madacy Entm't, 421 F.3d 1073 (9th Cir. 2005)
- Fortune Dynamic, Inc. v. Victoria's Secret Stores Brand Mgmt., 618 F.3d 1025 (9th Cir. 2010)
- Dreamwerks Prod. Group v. SKG Studio, 142 F.3d 1127 (9th Cir. 1998)
- Murray v. Cable NBC, 86 F.3d 858 (9th Cir. 1996)
- Brookfield Commc'ns v. West Coast Entm't Corp., 174 F.3d 1036 (9th Cir. 1999)
- Playboy Enters. v. Netscape Commc'ns. Corp., 354 F.3d 1020 (9th Cir. 2004)
- Miller v. Gammie, 335 F.3d 889 (9th Cir. 2003)
- Au-Tomotive Gold, Inc. v. Volkswagen of Am., Inc., 457 F.3d 1062 (9th Cir. 2006)
- Toyota Motor Sales, U.S.A., Inc. v. Tabari, 610 F.3d 1171 (9th Cir. 2010)
- Davis v. HSBC Bank, 691 F.3d 1152 (9th Cir. 2012)
- Freeman v. Time, Inc., 68 F.3d 285 (9th Cir. 1995)
- Multi Time Mach., Inc. v. Amazon.com, Inc., 792 F.3d 1070 (9th Cir. 2015)
- Dr. Seuss Enterprises, L.P. v. Penguin Books USA, Inc., 109 F.3d 1394 (9th Cir. 1997)
- Arc of California v. Douglas, 757 F.3d 975 (9th Cir. 2014)
- Grotrarian, Helfferich, Schulz, Th. Steinweg Nachf. v. Steinway & Sons, 523 F.2d 1331 (2d Cir. 1975)