

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

Alfwear, Inc. v. KulKote, LLC; Alfa Adhesives, Inc.; and Darren
Gilmore

Alfwear, Inc. v. KulKote, LLC; Alfa Adhesives, Inc.; and Darren Gilmore · No. Civil No. 2:19-cv-00027 ·
Decided May 8, 2026

SUMMARY

The United States District Court for the District of Utah denies Defendants’ renewed motion for judgment as a matter of law under Federal Rule of Civil Procedure 50(b) in a trademark dispute between Alfwear, Inc. and KulKote, LLC, Alfa Adhesives, Inc., and Darren Gilmore. The jury found trademark infringement, willfulness, and unfair competition but awarded no damages. The court concludes that sufficient evidence supported the jury’s findings, including on likelihood of confusion and intent, and declines to disturb the verdict.

CASE DETAILS

COURT	United States District Court for the District of Utah
WRITING FOR THE COURT	David Barlow
JURISDICTION	United States District Court for the District of Utah
DECIDED	May 8, 2026
DOCKET	Civil No. 2:19-cv-00027
DISPOSITION	other
PROCEDURAL POSTURE	Defendants sought renewed judgment as a matter of law under Federal Rule of Civil Procedure 50(b) after a jury found trademark infringement, willful infringement, and unfair competition but awarded no damages.
STANDARD OF REVIEW	Judgment as a matter of law under Rule 50 is appropriate only when the evidence provides no legally sufficient basis for a claim under controlling law. The court draws all reasonable inferences in favor of the nonmoving party, views the evidence in the light most favorable to the jury's verdict, does not weigh evidence or make credibility determinations, and grants the motion only when the evidence points but one way and is susceptible to no reasonable inference supporting the nonmoving party.

PRECEDENTIAL VALUE

Unpublished district court memorandum decision; precedential status unknown.

TOPICS

trademark infringement

motion for directed verdict

waiver

civil procedure

commercial litigation

PRACTICE AREAS

trademark law

trademark infringement

civil procedure

commercial litigation

QUESTIONS PRESENTED

1. Whether Defendants were entitled to judgment as a matter of law because no reasonable jury could find a likelihood of confusion between the KÜHL and KülKöte marks.
2. Whether Defendants' challenges to particular likelihood-of-confusion issues were waived because they were not stated with sufficient certainty in the Rule 50(a) motion.
3. Whether Defendants were entitled to judgment as a matter of law on the jury's finding of willful trademark infringement.
4. Whether the evidence provided a legally sufficient basis for the jury's infringement and willfulness verdicts.

HOLDINGS

1. A Rule 50(b) movant may assert only the same grounds for judgment as a matter of law that were raised in the pre-deliberation Rule 50(a) motion, although Rule 50 does not require technical precision and arguments are liberally construed when the trial court was adequately apprised of the movant's position.
2. The evidence provided a legally sufficient basis for a reasonable jury to find a likelihood of consumer confusion between Alfwear's KÜHL mark and Defendants' KülKöte mark.
3. The jury had a legally sufficient evidentiary basis to find that Defendants willfully infringed Alfwear's trademarks.

KEY QUOTATIONS

“Judgment as a matter of law is “appropriate in very limited circumstances,” and is to be “cautiously and sparingly granted.”” (Standard)

“These factors are interrelated and no one factor is dispositive.” (Discussion, Part I)

“Accordingly, the court DENIES Defendants’ motion for judgment as a matter of law under Rule 50(b).” (Order)

FACTUAL BACKGROUND

Alfwear sells outdoor clothing under the KÜHL mark and has used that mark continuously since 1993. KulKote sells temperature-regulating chemical products primarily to manufacturers of foam products, including

mattresses, furniture, pillows, and shoe components, under the KülKöte mark. The parties presented evidence that their marks shared similarities in lettering, color, sound, meaning, and temperature-related marketing, while also differing in length, capitalization, logos, and marketplace presentation. The jury found trademark infringement and willfulness, but found no actual damages.

PROCEDURAL HISTORY

Alfwear filed the action on January 14, 2019, asserting federal trademark infringement, federal unfair competition, and common-law unfair competition. The case proceeded to a five-day jury trial from January 12 through January 16, 2026. The jury found infringement, willfulness, and unfair competition, but found no actual damages and awarded none. The court previously denied Defendants' Rule 50(a) motion and denied the renewed Rule 50(b) motion in this memorandum decision.

DISPOSITION

other

CASES CITED

- Symons v. Mueller Co., 493 F.2d 972, 976 (10th Cir. 1974)
- Weese v. Schukman, 98 F.3d 542, 547 (10th Cir. 1996)
- Bill Barrett Corp. v. YMC Royalty Co., LP, 918 F.3d 760, 766 (10th Cir. 2019)
- In re: Cox Enters., Inc., 871 F.3d 1093, 1096 (10th Cir. 2017)
- Liberty Mut. Fire Ins. Co. v. Woolman, 913 F.3d 977, 983 (10th Cir. 2019)
- Lampkin v. Int'l Union, 154 F.3d 1136, 1142 (10th Cir. 1998)
- Mountain Dudes v. Split Rock Holdings, Inc., 946 F.3d 1122, 1129, 1131 (10th Cir. 2019)
- Hampton v. Dillard Dept. Stores, Inc., 247 F.3d 1091, 1099 (10th Cir. 2001)
- Stroup v. United Airlines, Inc., 26 F.4th 1147, 1156 (10th Cir. 2022)
- Perez v. El Tequila, LLC, 847 F.3d 1247, 1255-56 (10th Cir. 2017)
- United Int'l Holdings, Inc. v. Wharf Holdings Ltd., 210 F.3d 1207, 1229 (10th Cir. 2000)
- Universal Money Ctrs., Inc. v. Am. Tel. & Tel. Co., 22 F.3d 1527, 1529, 1531, 1535-36 (10th Cir. 1994)
- Equitable Nat'l Life Ins. Co., Inc. v. AXA Equitable Life Ins. Co., 434 F. Supp. 3d 1227, 1239-40 (D. Utah 2020)
- Beltronics USA, Inc. v. Midwest Inventory Dist., LLC, 562 F.3d 1067, 1071 (10th Cir. 2009)
- First Sav. Bank, FSB v. First Bank Sys., Inc., 101 F.3d 645, 653-54 (10th Cir. 1996)
- Hornady Mfg. Co., Inc. v. Doubletap, Inc., 746 F.3d 995, 1002, 1004-07 (10th Cir. 2014)
- Heartsprings, Inc. v. Heartspring, Inc., 143 F.3d 550, 554, 556-57 (10th Cir. 1998)
- Elevate Fed. Credit Union v. Elevations Credit Union, 67 F.4th 1058, 1074-76, 1080-81 (10th Cir. 2023)
- Water Pik, Inc. v. Med-Systems, Inc., 726 F.3d 1136, 1144, 1146-48, 1154-59 (10th Cir. 2013)
- Affliction Holdings, LLC v. Utah Vap or Smoke, LLC, 935 F.3d 1112, 1115 (10th Cir. 2019)
- M Welles & Assocs., Inc. v. Edwell, Inc., 69 F.4th 723, 735 (10th Cir. 2023)

- Kodiak Cakes LLC v. Continental Mills, Inc., 358 F. Supp. 3d 1219, 1234 (D. Utah 2019)
- Alfwear, Inc. v. Mast-Jaegermeister US, Inc., 2023 WL 5765891, at *10, *14-15 (10th Cir. 2023)
- W. Diversified Servs., Inc. v. Hyundai Motor Am., Inc., 427 F.3d 1269, 1274 (10th Cir. 2005)
- Klein-Becker USA, LLC v. Englert, 711 F.3d 1153, 1162 (10th Cir. 2013)
- Wagner v. Live Nation Motor Sports, Inc., 586 F.3d 1237, 1247-48 (10th Cir. 2009)

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