

Judge Rips THC Drink Co.'s 'Repackaged' Injunction Bid

By **Celeste Bott**

Law360 (March 5, 2024, 5:02 PM EST) -- A manufacturer of THC- and CBD-infused beverages shouldn't prevail on its second attempt to stop a rival from marketing drinks under an allegedly similar name, an Illinois federal magistrate judge found Monday, writing that the company's second injunction request "simply repackaged and reargued information."

Reddi Beverage Co. LLC argued in its August lawsuit that it has sold drinks under the Flora brand and trademark since 2019, but that competitor Floral Beverages LLC has begun marketing drinks under a "confusingly similar and nearly identical" Floral brand for cannabidiol-infused beverages.

But U.S. Magistrate Judge Gabriel Fuentes said Monday that despite two bites at the apple, Reddi hasn't done enough to secure a preliminary injunction while the trademark dispute plays out, recommending the district court deny the renewed motion.

In its second go-around, Reddi argued that its Flora trademark, when used with CBD- and THC-infused products, is an inherently distinctive suggestive trademark, and said that this time the judges must consider supplemental filings containing U.S. Patent and Trademark Office citations and other documents that it contends establish that the USPTO has not found the Flora mark to be merely descriptive.

Judge Fuentes, however, said even considering that additional information, he reached the same conclusion as the district judge who first denied injunction, under the same analysis.

"The district court did make statements indicating a judicial finding on the disputed question of whether the USPTO determined that the Flora mark was merely descriptive. But practically in the same breath, the district court said that the USPTO's determinations — whatever they were — ultimately were not germane to the district court's conclusion that the mark was not protectable," Judge Fuentes said. "That was because the district court, as it stated explicitly, undertook its own analysis of whether the mark was descriptive, independent of the USPTO citations."

The judge said he found that independent analysis "fundamentally sound" after his own review, and said it appeared Reddi misunderstood the nature of the district court's denial of its motion without prejudice. It wasn't that the district court didn't consider all the information it needed to, but rather that the plaintiff was seeking an injunction based on a "still undeveloped and incomplete discovery record," he said.

Judge Fuentes recommended that the motion again be denied without prejudice, which would offer Reddi the opportunity to try again "where new and game-changing information indeed has been developed in discovery."

"So far, that has not occurred, and plaintiff simply repackaged and reargued information it already placed before the district court on the first motion. Plaintiff is asked kindly to exercise great care not to do that again," he said. "The courts have now entered two lengthy written decisions making clear on that based on all the information plaintiff could now toss into the record, plaintiff has not established a right to preliminary injunctive relief."

Howard Michael of Crowell & Moring LLP, one of the attorneys for Floral Beverages, told Law360 on Tuesday that from the outset, his client has maintained that there is no trademark infringement in this case.

"And there is certainly no basis for preliminary injunctive relief," he said. "We are gratified that both Judge [Franklin] Valderrama and now Magistrate Judge Fuentes have seen things our way."

An attorney for the plaintiff declined to comment.

Reddi is represented by Daliah Saper and Brandon Campillo of Saper Law Offices LLC.

Floral Beverages is represented by Howard S. Michael, Emily T. Kappers and Virginia Wolk Marino of Crowell & Moring LLP.

The case is Reddi Beverage Co. LLC v. Floral Beverages LLC, case number 1:23-cv-06147, in the U.S. District Court for the Northern District of Illinois.

--Editing by Kelly Duncan.