

Gatorade: The Sport Fuel Company for "Average Joes"

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In 2016, SportFuel sued PepsiCo for using their registered trademark “SPORTFUEL” in a slogan used to advertise Gatorade products. SportFuel is a personalized nutrition consulting firm in Chicago. They also market sports drinks and supplements, like their “energizing phytonutrient powder mix” which contains the antioxidant effect of “25+ Servings of Fruits & Vegetables” in a single serving. They hold two registered trademarks for the term “SportFuel,” one for use in the nutritional counseling market and

the other for use in the dietary supplement and sports drink market.

Gatorade is, of course, known for its flavored sports drink traditionally poured by a group of celebratory athletes onto their unsuspecting coach. PepsiCo has expanded the Gatorade line of products beyond the iconic sports drink to include protein bars, energy boosters, and other athletic nutrition products. With the expanded line came the disputed slogan, “Gatorade The Sports Fuel Company.”

SportFuel sued PepsiCo alleging trademark infringement. What may have seemed like a slam dunk case for SportFuel — their Goliath competitor using the name of their company in a slogan to advertise competing products — was disposed of before reaching a jury. The District Court found that Gatorade’s use of “sport fuel” is a “fair use.” In this context, the “fair use” doctrine allows one to use a mark if they are not using it as a trademark, if they use the mark to describe their product, and they use the mark in

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good faith.

This case turned on whether the term “sports fuel” is descriptive of Gatorade’s sports drinks and other nutritional products. A term is descriptive if it refers to characteristics or categories of goods and requires no “imagination and perception” to determine the characteristics or categories to which it refers. Gatorade presented several examples of other companies using the terms “sport fuel” and “sports fuel” to refer to athletic nutrition products. A quick google search of the term “sports fuel” supports this: Gatorade and SportFuel both appear on the first page of results, but neither are in the top five results. The 7th Circuit agreed that there is “widespread industry use” of the term.

Gatorade bolstered its argument with a statement from the USPTO. PepsiCo sought a trademark registration of the term “Gatorade The Sports Fuel Company” and the USPTO opined that “Sports Fuel is commonly used in reference to sports nutrition” and that consumers would readily understand that it refers to a company that provides sports nutrition products. Thus, the court found the evidence of widespread industry use and the opinion of the USPTO persuasive and determined that “sport fuel” is descriptive of a category of athletic nutrition products.

SportFuel had a unique argument for why Gatorade’s use was not descriptive even though “sport fuel” is descriptive of a category of athletic nutrition products: Gatorade is not an *athletic* nutrition product. SportFuel's basic argument was that most people who drink Gatorade are "average Joes," not high-performing athletes. The court was not convinced and quipped “the fact that Gatorade sells more sports drinks to average Joes who limit their rigorous exercise to lawn mowing does not change the athletic characteristics of Gatorade products.” The court compared Gatorade to other products with athletic characteristics that are not necessarily used for athletic activities, such as yoga pants, to find that the use of the product “has no bearing [on] whether the term is descriptive.”

Perhaps SportFuel should have argued Gatorade is not an athletic nutrition product based on its nutrition facts. Gatorade touts its ability to hydrate better than water and to restore electrolytes lost in sweat, but it also contains 34 grams of sugar and 0% real juice. An average Joe who consumes Gatorade for the taste rather than for the hydration and restoration qualities, is just consuming excess calories and sugar.

Companies should learn from this case and avoid adopting descriptive terms, such as “sport fuel,” as their primary brand name. Trademark protection is the weakest for descriptive terms and there is nothing preventing a competitor from using that term in a descriptive manner. Oh, and by the way, average Joes should learn from this case and avoid sugary drinks. According to the American Heart Association, “the best thing you can drink is water!”