

“No beer flow” – NHL sues seller of Stanley Cup-themed beer cups for trademark infringement

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by Kaleb McNeely



Back in February, we covered the trademark dispute between the U.S. Army and the Las Vegas Golden Knights professional ice hockey team. As we predicted, the Army and the Golden Knights have now settled that matter by executing a co-existence agreement allowing both parties to continue using their respective

marks.

Although that dispute is now resolved, and hockey stars are in the midst of their well-deserved off-season breaks, professional hockey continues to make trademark news this summer. On July 23, the National Hockey League filed a federal lawsuit, accusing a group of Illinois-based companies and their owner of trademark infringement, false association, dilution, copyright infringement, and unfair competition. According to the NHL’s complaint, defendants The Hockey Cup LLC, ABC Stein LLC, and A&R Collectibles, Inc. are all owned and managed by one Roger Dewey, who is also named as a defendant in the lawsuit. The NHL alleges that the “unauthorized use of NHL intellectual property is the very foundation of Defendants’ businesses,” and that Defendants have “made extensive, unauthorized use of NHL and Member Club trademarks and trade dress when marketing and selling products to the public.” The NHL takes particular exception to Defendants marketing and selling a plastic beer stein (which the complaint labels the “Infringing Stein”) that is a replica of the NHL’s famous Stanley Cup trophy. The complaint includes the following depictions of the Stanley Cup and the “Infringing Stein”:

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[one_half]**The STANLEY CUP Trophy**

[/one_half]



[one_half_last]**The Infringing Stein**

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A cause of further distress to the NHL is the fact that Defendants allegedly market the Infringing Stein to create a false impression that the NHL is associated with Defendants and their products. For example, the complaint claims that Defendants have called the Infringing Stein “The Stanley Stein” and “The Hockey Cup,” have paired images of the Infringing Stein with other NHL trademarks, and use packaging that imitates what the NHL calls the “well-known travel case for the actual Stanley Cup trophy” (depicted in the

complaint with the below illustrations).



[one_half]**The STANLEY CUP Trophy Case**
[/one_half]



[one_half_last]**The Infringing Stein Case**
[/one_half_last]

To make matters even worse (from the NHL's perspective), the Infringing Stein is allegedly "poorly designed and made cheaply," which the NHL contends causes additional damage to its goodwill and reputation. Indeed, the complaint quotes Amazon.com reviews as stating that the Infringing Stein is "impossible to clean," has "no beer flow," and (gasp!) is "terribly difficult to fill and drink out of and results in flat bear [sic]."^[1] As hockey fans will know, drinking champagne from the Stanley Cup is a time-honored tradition for trophy winners (Alex Ovechkin was pictured in a Las Vegas club drinking champagne from Lord Stanley's trophy after winning the Cup this spring). We have yet to hear of a Stanley Cup winner complaining that the Cup is difficult to drink out of or that it "results in flat [champagne]"!

As one might expect, the NHL's lawsuit is not the opening volley in this battle. Indeed, had Defendants simply gone about their business, quietly selling cheap plastic Stanley

Cup replicas, it's possible the NHL would have left them alone. Instead, however, Defendants filed intent-to-use trademark applications in the PTO in 2017 for the following design marks to be used on mugs and beer cups:



[one_half]/[one_half]



[one_half_last]/[one_half_last]

The NHL then filed an opposition to Defendants' trademark applications, citing twelve NHL Stanley Cup-related trademark registrations and alleging Defendants' marks would create a likelihood of confusion. Defendants responded aggressively, to say the least – filing counterclaims in the PTO seeking cancellation of *all twelve* of the Stanley Cup registrations cited in the NHL's opposition. Apparently incensed by Defendants' cheek, the NHL then commenced this lawsuit.

Given their past conduct in the PTO, Defendants are not likely to fold easily. Legally speaking, however, they may be on thin ice. Notably, even though the NHL does not appear to currently sell beer mugs or steins in the shape of the Stanley Cup, it is not required to prove lost sales to prevail in this lawsuit. Instead, the NHL need only show that there is a likelihood of confusion as to source, sponsorship, connection, or affiliation. In other words, if a consumer goes online, sees the Infringing Stein, and is likely to think that the product or its manufacturer is affiliated with the NHL (not an unreasonable assumption), that is probably enough. We will continue to follow the developments in this case but – as of now – the smart money seems to be on the NHL emerging victorious.

[1] A review of Amazon.com reveals that the Infringing Stein is actually fairly popular – with a review score of 4.2 out of 5 – suggesting that the NHL may have cherry-picked some of the less enthusiastic reviews.