

Second Circuit Goes Rogue – Reverses District Court on Priority of Common Law Rights in ROGUE Brand Apparel

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by Sandra Edelman

A recent Second Circuit decision in a case involving two companies using the ROGUE mark for apparel sets the record straight on what it means to have common law priority of rights in a mark for a category of goods in different trade channels. *Excelled Sheepskin & Leather Coat Corp. v. Oregon Brewing Company* (2d Circ. July 27, 2018). The opinion confirms that a senior user of a mark for a category of products has protectable prior rights across a wide range of trade channels even if it was not the first user of a mark in each and every marketing channel.

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