A picture is worth a thousand woes!

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Authors

Isabelle Jomphe

Partner, Lawyer Partner, and Trademark Agent

James Duffy

Patent Agent and Senior Associate

A recent Federal Court decision [1] reiterates the importance of protecting the main design elements featured on products and packaging. This decision also recalls the dangers of too closely mimicking the appearance of a competitor's products.

In its ruling, the Federal Court sided with Diageo Canada Inc. ("Diageo") and ordered Heaven Hill Distilleries, Inc. ("Heaven Hill") to cease the sale of its ADMIRAL NELSON'S rum. The Court came to this decision after concluding that the design elements of the ADMIRAL NELSON'S label caused confusion with the label of CAPTAIN MORGAN bottles of rum.



In addition to having to cease selling and promoting its product, Heaven Hill will have to comply with the following order from the Court (unless an appeal is filed):

> destroy the bottles and all material containing the image in question (including all packages, labels, and advertising material);
> pay damages to Diageo or pay to Diageo the profits made from the sale of its ADMIRAL NELSON'S rum.

Here are some tips to remember in order to avoid conflicts and the drastic consequences

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that may follow:

seek advice from experts before adopting visual elements similar to those of your competitors;
carry out searches for the main design elements that you intend to use on your labels and packaging;
protect the main design elements that distinguish your products to be in a strong position to act against competitors if need be.

Prevention is better than cure!

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1. *Diageo Canada Inc. v. Heaven Hill Distilleries Inc.and al* 2017 FC 571

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