

# The Bryant Park Hotel Denied Preliminary Injunction in Trademark Dispute

**May 6, 2015**

The Bryant Park Hotel has been using its registered trademarks, including the well-known mark THE BRYANT PARK HOTEL, in connection with hotel, restaurant, and bar services since 2001, but U.S. District Judge Rakoff found that this was not enough to prevent a development right down the street from marketing its future building as "The Bryant."

## **The Parties and the Dispute**

Plaintiff Philips Bryant Park LLC (PBP) is the owner of the Bryant Park Hotel and the trademarks THE BRYANT PARK and THE BRYANT PARK HOTEL. PBP's marks are registered for hotel services, and hotel, restaurant, and bar services, respectively.

Earlier this year, the Defendants HFZ Capital Group LLC and several associated entities (collectively, "HFZ"), began construction on a 32-story mixed-use hotel and condominium project located at 20 West 40th Street in New York, New York (the "20 West Project"). The 20 West Project is located less than 200 feet from the Bryant Park Hotel. HFZ plans to name the building and the condominiums "The Bryant," but does not intend to use this name for the hotel.

In March 2015, PBP learned about HFZ's planned use of the name "The Bryant" for its new development. Shortly thereafter, on April 16, 2015, PBP filed suit against HFZ in the Southern District of New York alleging, among other things, trademark infringement, dilution, and unfair competition. PBP's complaint seeks over \$50 million in damages. PBP also sought a preliminary injunction preventing HFZ from using the name "The Bryant" in connection with the 20 West Project.

## **The Court's Decision**

On April 30, 2015, Judge Rakoff denied PBP's motion for a preliminary injunction. To prevail, the PBP was required to show that it owns valid trademarks, that HFZ's use of "The Bryant" would be likely to confuse consumers, and that it would be irreparably injured without an injunction.

First, the Court determined that PBP failed to demonstrate a likelihood of consumer confusion between the marks at issue. According to Judge Rakoff, although there might "be a possibility of consumer confusion if [HFZ] were to use the term 'The Bryant' in association with hotel services," this possibility was significantly lessened because HFZ planned to use "The Bryant" only in association with condominium services. In reaching this conclusion, Judge Rakoff drew a sharp distinction between these two types of services and rejected PBP's argument that "condominium services and hotel services cater to the same consumer population and are so similar that confusion is likely to result. . . ."

Second, the court found that PBP failed to demonstrate that it would suffer irreparable harm in the absence of an injunction. The court found that until such time as 20 West Project is complete (which is estimated to be in 2017), "the advertising materials promoting the building will not likely cause irreparable harm to PBP's reputation and goodwill."

The court's decision is highly fact-specific and seems to turn largely on the fact that both the litigation and the 20 West Project are in early stages. Judge Rakoff's order acknowledges as much – it explicitly invites the PBP to refile its motion "at a later time in the event that the circumstances have changed. . . ." The decision, therefore, should not be viewed as determinative of which party will prevail on the merits of this dispute or necessarily affecting pending or future applications for injunctions in the hotel and condominium space. We will continue to monitor the developments in this case.

#### [Related Professionals](#)

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- **Jeffrey A. Horwitz**  
Partner
- **Susan L. Gutierrez**  
Partner
- **Lee Popkin**

Partner