

# Supreme Court Denies Review of Ninth Circuit Decision Finding no Trademark Infringement for Amazon Search Results

**March 2, 2016**

On February 29, 2016, the Supreme Court declined to review a Ninth Circuit decision holding that there was no likelihood of confusion, and therefore no trademark infringement, where Amazon.com responded to consumer searches for "MTM Special Ops," a federally registered trademark for watches that Amazon does not carry, by returning search results for other clearly labeled non-MTM watches.

Plaintiff Multi Time Machine, Inc. (MTM) manufactures and markets watches under various brand names, including MTM Special Ops, and holds the federally registered trademark "MTM Special Ops" for timepieces. MTM's watches are not available for purchase through Amazon.com. However, a consumer who searches for "MTM Special Ops" military-style watches on Amazon will nonetheless be directed to a list, with photographs, of several other brands of military style watches that Amazon does carry, each of which is specifically identified by its brand name. MTM sued Amazon, alleging that these search results constituted trademark infringement in violation of the Lanham Act, and created a likelihood of confusion between MTM Special Ops watches and the other non-MTM military style watches listed in Amazon's search results page.

The Ninth Circuit initially agreed with MTM that a jury could find that Amazon had created a likelihood of confusion, and reversed the district court's grant of summary judgment in favor of Amazon.[\[1\]](#) But just a few months later, that same panel agreed to a request by Amazon for a rehearing and reversed course, finding that in this situation, where Amazon's search results page "clearly labels the name and manufacturer of each product offered for sale and even includes photographs of the items, no reasonably prudent consumer accustomed to shopping online would likely be confused as to the source of the products."[\[2\]](#)

In reaching its decision, the court focused on the fact that the search results were "clearly labeled" with each product's name and manufacturer "in large, bright, bold letters," together with a photograph of the item. In fact, the manufacturer's name was listed twice in each search result, together with the brand name and model number of the product. The court also noted that none of the watches in the search results was labeled "MTM" or "Special Ops" or with the phrase "MTM Special Ops." Moreover, the products listed in the search results included products that were not even watches (e.g., a book titled "The Moses Expedition"). Under these circumstances, the court found that "no reasonably prudent consumer accustomed to shopping online would view Amazon's search results page and conclude that the products offered are MTM watches." While the court acknowledged that it was "possible that someone, somewhere might be confused by the search results page," because the goods in this case were expensive watches that sold for several hundreds of dollars, the court noted that the relevant consumer was likely to exercise care and precision in their purchase. The relevant consumer in this case was therefore a "reasonably prudent consumer accustomed to shopping online" and, the court found, the potential confusion of the "unreasonable, imprudent and inexperienced web-shoppers are not relevant."

This case does not address the outcome in a factually different scenario where the search results are not as clearly labeled, are otherwise confusingly similar to the product the consumer initially searched for, or where the products at issue are less expensive goods for which consumers may be less likely to exercise care in their purchase decision. However, the Supreme Court's choice to let this decision stand indicates, at least for the time being, that the practice of redirecting a consumer search for a company's trademarked product to other competing products does not, in and of itself, necessarily constitute trademark infringement.

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[1] *Multi Time Mach., Inc. v. Amazon.com, Inc.*, 792 F.3d 1070 (July 6, 2015).

[2] *Multi Time Mach., Inc. v. Amazon.com, Inc.*, 804 F.3d 930 (Oct. 21, 2015).

#### Related Professionals

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