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Supreme Court to Decide Whether a Trademark's "Inherent Strength" is a Question for Judges or Juries

Minding Your Business on **July 24, 2026**

On June 29, 2026, the Supreme Court agreed to hear a trademark dispute between RiseandShine Corporation, doing business as Rise Brewing, and PepsiCo, Inc. over Pepsi's "Mtn Dew Rise Energy" drink. The Court granted cert on whether judges or juries should evaluate a trademark's inherent (or conceptual) strength when assessing the likelihood of consumer confusion under the Lanham Act. The answer could determine how much room judges have to dispose of trademark cases before trial — and how much of that analysis belongs with jurors, who can draw on their own understanding of how consumers actually perceive brands in the marketplace.

The Underlying Dispute

Rise Brewing sells nitro-brewed canned coffee under the registered mark "RISE." In 2021, Pepsi launched a canned energy drink called "Mtn Dew Rise Energy." Rise Brewing sued, alleging trademark infringement and unfair competition under the Lanham Act.

The Second Circuit affirmed summary judgment for Pepsi. The court treated the strength of Rise Brewing's mark as a legal question and concluded that "RISE" was inherently weak because of the word's close association with coffee, waking up, and morning energy. The court also found that consumers were unlikely to be confused due to the products' sufficiently different branding. As a result, Rise Brewing's claims never reached a jury.

SCOTUS Grants Certiorari on the Inherent Strength Question

In granting cert on the inherent strength question, the Court will address one of the individual factors in the overall likelihood-of-confusion analysis. That framework varies across circuits. Rise Brewing argued that the Second Circuit stands alone in treating trademark strength as a pure question of law, while in most other circuits, how consumers perceive a mark is treated as a factual issue, typically resolved by a jury. In some ways, that the Supreme Court will hear the case is surprising. The Solicitor General had recommended denying review, agreeing that the Second Circuit erred in characterizing inherent strength as a pure question of law, but arguing the error was not outcome-determinative because inherent strength is just one part of the broader strength-of-the-mark inquiry, itself only one factor in the Second Circuit's test for evaluating consumer confusion. The Government pointed out that other factors in the confusion analysis also cut against Rise Brewing, making the case a less-than-ideal vehicle for resolving the legal question. And the Court took up an unpublished summary order, not a full appellate opinion following trial.

Practical Implications

The Court may issue a narrow procedural ruling and avoid resolving the Circuits' different likelihood-of-confusion tests. Nonetheless, its decision could carry meaningful practical consequences for trademark disputes. If the justices treat inherent trademark strength as a factual question for the jury, it will be harder for defendants to obtain dismissal or summary judgment.

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