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SUPREME COURT

SCOTUS to rule on Pepsi win; trademark enforcement changes could follow

By Patrick H.J. Hughes

The U.S. Supreme Court has agreed to consider a trademark dispute involving PepsiCo Inc. over whether trademark strength is a question of fact in a likelihood-of-confusion analysis, and attorneys say the ruling could affect trademark litigation.

RiseandShine Corp. v. PepsiCo Inc., No. 24-1016, cert. granted, 2026 WL 1855011 (U.S. June 29, 2026).

The high court on June 29 granted certiorari to RiseandShine Corp., which, as Rise Brewing, makes canned nitro-brewed coffee under a "Rise" brand.

In an infringement suit filed in June 2021, Rise Brewing accused PepsiCo of violating



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CYBERCRIME

Q&A: NetBeacon Institute — combating DNS abuse in the age of AI

By Jason Seashore, J.D.

Artificial intelligence is changing how Domain Name System abuse is built, scaled and deployed — even if the impact is not yet fully visible in the data.

The NetBeacon Institute, an organization dedicated to fighting DNS abuse, has been closely monitoring this emerging threat. Graeme Bunton, the institute's executive director, and Rowena Schoo, senior director of industry affairs and policy, spoke to Westlaw Today about AI's growing role in online abuse, the importance of targeted policy responses and where the industry needs to focus next.

Westlaw Today: NetBeacon is a nonprofit, but what does that mean in practice? What is your relationship with Public Interest Registry?

Graeme Bunton: Public Interest Registry is a nonprofit organization created by the Internet Society to manage the .org domain.

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trademark law with a morning energy drink called “Mtn Dew Rise Energy.”

PepsiCo challenged the likelihood that consumers would confuse the companies’ products and ultimately moved for summary judgment.

After years of litigation, the 2nd U.S. Circuit Court of Appeals in December 2024 affirmed a district court’s decision to grant the motion, finding there was no likelihood of consumer confusion. *RiseandShine Corp. v. PepsiCo Inc.*, No. 23-1176, 2024 WL 5165388 (2d Cir. Dec. 19, 2024).



“The case has the potential to influence trademark enforcement beyond the beverage industry,” Greenspoon Marder LLP attorney Sharon Urias said.

The panel said the strength-of-the-mark factor has two components — inherent strength and acquired strength — and it rejected Rise Brewing’s argument that inherent strength should be treated as a factual question for a jury.

The panel found the word “rise” to have “strong logical associations” with coffee, so it considered Rise Brewing’s “Rise” mark to be inherently weak.

“Weak marks are entitled to only an extremely narrow scope of protection, unless a convincing combination of other ... factors militates strongly in favor of likelihood of confusion,” the panel wrote, citing a 2022 opinion in the case.



“A ruling for Rise Brewing on the judge-versus-jury issue could make summary judgment harder in some trademark cases,” Robins Kaplan LLP attorney David Martinez said.

Rise Brewing filed its certiorari petition in March 2025, saying the appeals panel erred in treating “conceptual strength” as a legal question.

PepsiCo disagrees. “Both trademark strength and the ultimate determination of likelihood of confusion are routinely decided on summary judgment across all circuits when there is no true issue for the jury to decide,” it says.

ATTORNEYS: SUMMARY JUDGMENT HARDER, INJUNCTIONS EASIER

Attorneys not involved in the dispute offered their opinions about what could result after the Supreme Court issues its ruling in the 2026 term.

“The case has the potential to influence trademark enforcement beyond the

beverage industry,” Greenspoon Marder LLP partner Sharon Urias said, calling trademark strength a “key component” of a likelihood-of-confusion inquiry.

“If this question is reserved for juries, then parties can expect fewer case-dispositive motions, and increased reliance on survey evidence and other tools designed to demonstrate how consumers view a mark,” she said.



Hall Estill attorney Randy McCarthy said trademark plaintiffs could find preliminary injunctions easier to get.

David Martinez, a partner at Robins Kaplan LLP, said, “A ruling for Rise Brewing on the judge-versus-jury issue could make summary judgment harder in some trademark cases, especially where the evidence of marketplace strength or consumer perception is disputed.”

He added that federal judges, however, could still grant summary judgment if they determine that no reasonable jury could find a likelihood of confusion.

Randy McCarthy, a patent partner at Hall Estill, said trademark plaintiffs could find preliminary injunctions easier to get if the justices overturn the appellate court’s decision.

“Regardless of the outcome, trademark litigants should calibrate their evidence strategy early in the case, such as by

developing robust consumer perception proof to shape how a jury understands both inherent and commercial strength,” he said.



“What may matter most is not only how the court rules, but the reasoning it uses to get there,” Finnegan LLP attorney Doug “Chip” Rettew said.

‘PRACTICAL MATTER’

Doug “Chip” Rettew, partner and co-leader of Finnegan LLP’s litigation and trial section, explained that “as a practical matter,” judges often need to decide

trademark cases on summary judgment when strength is an issue.



Neal Gerber Eisenberg LLP attorney Ian Block said assessing trademark strength “necessarily involves considering factual inputs.”

“What may matter most ... is not only how the court rules, but the reasoning it uses to get there — reasoning that could supply arguments for, or against, summary judgment in trademark cases,” he said.

Ian Block, intellectual property partner at Neal Gerber Eisenberg LLP, said assessing trademark strength “necessarily involves considering factual inputs.”

But no matter what the high court decides, “trademark litigators will continue to need to build a convincing record and tell a coherent story to persuade the factfinder that the mark in their case should land at a party’s desired point on the spectrum of distinctiveness,” he said.

Rise Brewing is represented by Alston & Bird LLP. PepsiCo is represented by Kirkland & Ellis LLP. **WJ**

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Related Filing:

Opinion granting certiorari: 2026 WL 1855011
Opposition brief: 2025 WL 1997440
Certiorari petition: 2025 WL 905388
2nd Circuit opinion (2024): 2024 WL 5165388
Complaint: 2021 WL 6278931

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