

## All shook up!



In July 2017, the UKIPO rejected two trade mark applications by the craft brewers Brewdog plc for the marks ELVIS JUICE and BREWDOG ELVIS JUICE for beer and ale, in the light of an earlier trade mark for ELVIS which was also registered for beer.

The Hearing Officer held that as “Mr Presley is the most famous of Elvises, I consider that most average consumers, on seeing the name Elvis alone, are likely to conceptualise that on the basis of Elvis Presley.” He found that there was a likelihood of confusion between ELVIS and both the Brewdog marks.

On 16 January 2018, Professor Phillip Johnson allowed the appeal in relation to the mark BREWDOG ELVIS JUICE. He found that BREWDOG ELVIS JUICE conjures up the concepts of names, dogs, brewing, and liquids, but ELVIS was just a name, and there was only a low level of conceptual similarity between the marks. The common element of ELVIS would not make consumers link ELVIS and BREWDOG ELVIS JUICE, so there was no likelihood of confusion.

The appeal decision contains some interesting comments on the extent to which judicial notice may be taken of facts: “the further away the fact is from the tribunal’s day-to-day experience the less appropriate it is for it be found without evidence. Importantly, in this sense it is not the particular Hearing Officer’s day-to-day experience which is relevant, but that of the notional tribunal. In other words, it is a fact so well-known that all Hearing Officers are likely to be aware of it and nobody could reasonably dispute it.”

Click [here](#) to read the full decision.

[Amanda Michaels](#) of Hogarth Chambers (instructed by **Lawrie IP**) appeared for Brewdog plc and [Michael Hicks](#) of Hogarth Chambers (instructed by **Potter Clarkson**) appeared for ABG EPE IP LLC.

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