

Ken Parker in Bloomberg BNA: Get Financial Expert in Trademark Dispute

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The maker of Jim Beam Bourbon successfully limited a competitor's opportunities to recover money in a trademark infringement trial for failing to supply critical information on its alleged damages during discovery, *Bloomberg BNA's Patent Trademark & Copyright Journal* reported.

Johnny Love's lawsuit claims that the logo on Beam's Pucker flavored vodka infringes a lipstick-mark-shaped trademark. The U.S. District Court for the District of Nevada ruled Aug. 24 that JL Beverage Co., maker of the Johnny Love vodka line, can't seek actual damages or reasonable royalties even if it wins its case against Beam Inc. for infringing its lipstick logo (*JL Beverage Co. v. Beam, Inc.*, 2017 BL 297524, D. Nev., No. 11-417, 8/24/17).

Instead, under the controlling law of the 9th U.S. Circuit Court of Appeals, Johnny Love will have to seek recovery from Beam's profits, which requires meeting a higher standard of proving that Beam willfully infringed Johnny Love's trademark rights. This ruling shows one way in which failure to respond to requests for information before trial can severely limit a plaintiff's remedies in litigation.

During discovery, Beam several times asked JL to specify its monetary loss claim. JL responded only that it was in the process of calculating its losses, according to the court's ruling. ...

The ruling "highlights the need for a trademark plaintiff to engage a financial expert on such matters or simply 'cut bait' on the issue of actual damages," Kenneth G. Parker, a partner in the Haynes & Boone, LLP Orange County office, told *Bloomberg BNA*. ...

Excerpted from *Bloomberg BNA's Patent Trademark & Copyright Journal*. To read the full article, click [here](#). (Subscription required)