

Alexander Lutzky in INTA Bulletin: U.S. Federal Circuit Rebukes Trademark Trial and Appeal Board over Whether the Term 'ZERO' Is Generic for Soft Drinks

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PRACTICES Intellectual Property Litigation, Trademark and Advertising, Intellectual Property

On June 20, 2018, the U.S. Court of Appeals for the Federal Circuit reversed the decision of the Trademark Trial and Appeal Board (TTAB) of the United States Patent and Trademark Office (USPTO) in *Royal Crown Company, Inc. v. The Coca-Cola Company*. In this trademark dispute between two major soft drink makers, the court held that the TTAB committed multiple errors when analyzing whether Coca-Cola's use of the term "ZERO" in 17 trademark applications was generic or merely descriptive and remanded the case. *Royal Crown Company, Inc., et al. v. The Coca-Cola Company, No. 2016-2375, slip op. at 9, 16* (Fed. Cir. June 20, 2018).

Trademark practitioners should consider two points from the Royal Crown decision. First, only Coca-Cola presented consumer survey evidence, although the court found the TTAB weighted that evidence improperly. Second, when prosecuting a potentially generic mark, practitioners should remember that if a subset or key aspect of the genus of goods/services in question is generic, then the mark may be considered generic for the whole genus of goods/services.

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