



BLOGS
Trademarks

South Carolina Federal Court Denies a Motion to Dismiss a Dietary Supplement Company's Trademark Infringement Claims in Connection with Unauthorized Amazon Sales

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A federal court in South Carolina recently denied Amazon sellers Reza Davachi, Rez Candles Inc., Parvin Davachi, and PBD Collectibles LLC's (collectively, Davachi) motion to dismiss Thorne Research, Inc.'s trademark infringement claims. *Thorne Research, Inc. v. Davachi*, 2024 WL 4607943 (D.S.C. Oct. 29, 2024).

Thorne, a health and technology company that makes dietary supplements and at-home biomarker tests, brought trademark infringement claims and a tortious interference claim against Davachi in connection with their unauthorized sale of Thorne's products on Amazon. Thorne's products are exclusively sold by Thorne or by its authorized sellers who must abide by Thorne's various quality control and customer service/sales practices (e.g., Thorne's sixty-day satisfaction guarantee, test purchases, audits, expiration, and others). Authorized sellers are permitted to sell the products only on pre-approved authorized websites—online marketplaces such as Amazon are not authorized websites. Part of Thorne's reason for this limitation is to prevent customer confusion of Thorne's products with those of unauthorized sellers in the Amazon marketplace, and to minimize the risks of negative reviews associated with unauthorized Amazon sellers or other issues. Thorne alleged that Davachi sold at least 100,000 Thorne products via Amazon alone—collecting related negative customer reviews regarding fulfillment issues and drop shipping. Thorne filed its complaint alleging trademark infringement and unfair competition in violation of the Lanham Act, common law trademark infringement, violation of the South Carolina Unfair Trade Practices Act, and tortious interference with contract and business expectancy.

Relying on two exceptions to the "first sale doctrine," the court denied Davachi's motion to dismiss because it found Thorne's complaint sufficiently alleged trademark infringement on its first four causes of action. The first sale doctrine, a defense to trademark infringement, "permits the resale of trademarked goods without subjecting the reseller to infringement liability where there is no possibility that the subsequent purchaser will confuse the reseller for the producer"—unless the quality control or material difference exceptions apply. A trademark holder is entitled to relief under the quality control exception when it demonstrates: (1) legitimate, substantial, and nonpretextual quality control procedures, (2) that it adheres to these procedures, and that (3) the non-conforming sales will diminish the value of the trademark. Notably, the test does

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not consider the actual quality of the goods, but rather, the trademark holder’s control of quality. The court found that Thorne’s allegations regarding its measures taken to ensure the quality of its products, Davachi’s failure to enact the same quality control measures, and the unauthorized sales of at least 100,000 products on Amazon and related negative Amazon reviews were sufficient to allege trademark infringement under the quality control exception. The material difference exception applies if a trademark holder can demonstrate a material difference relevant to a customers’ decision about whether to purchase a product. In this case, the material difference was Thorne’s Satisfaction Guarantee and quality control standards—benefits not provided for products Davachi sold on Amazon. The court found that the Davachi’s alleged sale of Thorne’s products without these benefits could plausibly confuse customers; thus, Thorne sufficiently alleged trademark infringement under the material difference exception. Finally, the court found Davachi failed to specify why Thorne’s allegations were insufficient to plead a tortious interference claim. Accordingly, the court denied the motion to dismiss in full.