

# COMPANY AND SOLE DIRECTOR JOIN FORCES FOR ENERGY DRINK INFRINGEMENT

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- ▶ Claim for trade mark infringement and passing off by energy drink manufacturer.
- ▶ Company and sole director (and sole shareholder) both defendants.
- ▶ Should the individual defendant director be held jointly liable with the corporate defendant?

## What's it about?

Grenade (UK) Ltd (**Grenade**) is an energy drink manufacturer that has been trading since 2010 using the name GRENADE and a logo of a grenade firearm, both of which are registered as EU Trade Marks.

The first defendant, Grenade Energy Limited (**GEL**), was incorporated in 2013 and supplies energy drinks. One of its main products is an energy drink called Epic. The second defendant is the sole director and shareholder of GEL.

Grenade claimed trade mark infringement and passing off against GEL in relation to its use of the GRENADE marks, arguing that the second defendant was jointly liable with the first defendant.

The defendants admitted trade mark infringement but argued that they had a defence to passing off on the basis that the claimant suffered no loss. In addition, the defendants argued that the second defendant director should not be held jointly liable with GEL in relation to the use of the GRENADE marks.

## Why does it matter?

The court found for the claimant on both issues. In relation to passing off, it held that passing off was "inevitable" given that there had been a misrepresentation that would cause the claimant damage. Even if the claimant did not lose sales of its product, it would suffer "some loss of control" over its goodwill.

In relation to the joint liability point, the court noted that as the first defendant was effectively a one-man company, there was an "evidential presumption" that acts carried out by GEL were at the instigation of its sole director, the second defendant. The defendants were unable to rebut that presumption.

## Now what?

This is a reminder that individuals can be liable for the acts of companies, where all decisions of the company are effectively decisions of the individual controlling the company.

*Grenade (UK) Ltd v Grenade Energy Ltd and another [2016] EWHC 877 (IPEC)*

For further information on this or any other IP related matter please contact [Andrew Bayley](#) on 0161 934 6436