

What's in a Name?

By Reg P. Wydeven
April 28, 2007

In William Shakespeare's classic 'Romeo and Juliet', Juliet ponders her future with Romeo, whose surname is keeping them apart. She asks herself, "What's in a name? That which we call a rose by any other name would smell as sweet." In her mind, something's substance is more important than what it is called.

However, we still think names are pretty important. After all, the names of two unusual beverages are at the center of two legal firestorms.

First of all, the family of Jimi Hendrix filed a federal lawsuit against Craig Dieffenbach and companies he owns over their marketing of Hendrix Electric Vodka. Experience Hendrix, the family company that is headed by Jimi's sister Janie Hendrix, calls the campaign a "sick joke", seeing as Jimi's death in 1970 was alcohol-related.

Hendrix Electric Vodka is packaged in purple-tinted bottles, inspired by one of Jimi's biggest hits, 'Purple Haze', and has his face and signature above the label. Janie is concerned that consumers will believe that the family has endorsed Hendrix Electric Vodka, which it clearly has not.

Dieffenbach is challenging the suit, claiming the family has no legal basis to prevent him from marketing Hendrix Electric Vodka because of a 2005 federal court ruling that held that Experience Hendrix merely owns the rights to Jimi's music, not his name and image.

Secondly, the U.S. Food and Drug Administration is taking a hard look at a new energy drink called 'Cocaine.' The drink, which comes in a red can with the name 'Cocaine' spelled out on the side in white powder resembling the drug, doesn't actually contain cocaine, but it is being marketed as "the legal alternative" to the illegal drug.

The FDA says that kind of claim is illegal, as is the claim by Redux Beverages, the Las Vegas-based company that manufactures Cocaine, that the drink contains an ingredient that can reduce cholesterol and prevent hardening of arteries.

The FDA informed Redux Beverages that because of these claims, the drink is a drug and cannot be sold without federal approval. Further, the beverage violates product-labeling laws because it doesn't have "adequate directions for its intended uses."

Cocaine was one of approximately 500 energy drinks introduced across the world last year, and Hannah and James Kirby, who founded Redux Beverages, wanted to pick a name that stood out from the rest. The FDA agrees they accomplished their goal.

Redux insists its energy drink contains the same ingredients as all the others on the market and that it is not a drug. All of the marketing for Cocaine was intended to be tongue-in-cheek.

But unlike Juliet, the FDA takes names pretty seriously. The FDA ordered Redux to notify the agency of its plans to correct the violations of federal law. If it fails to do so, Redux can face seizure of its products, injunctions and possible criminal prosecution.

The Kirbys have apparently seen the error of their ways, and are willing to cooperate with the FDA about how to comply with federal law, and that they have retooled their marketing strategy.

Coincidentally, last year James Kirby attempted to trademark the name "cocaine". An opposition to his application was filed and is now pending at the Trademark Trial and Appeal Board, according to the U.S. Patent and Trademark office.

Neither of these drinks sound too refreshing to me – I think I'll stick with my Mountain Dew.

This article originally appeared in the Appleton Post-Crescent newspaper and is reprinted with the permission of Gannett Co., Inc. ©2007 McCarty Law LLP. All rights reserved.