



2027 APAC MOOT COURT COMPETITION OFFICIAL PROBLEM

Please note:

- A. The facts in this Moot Court Problem are fictional. The party names, businesses, trademarks, trade dress, and artistic works are not intended, and should not be understood, to refer to or reference any individual (living or dead) or any institution, extant or defunct. Any resemblance to any real person, organisation, product, or situation is purely coincidental.

The case presented below of the Solmere High Court, Intellectual Property Division is imaginary. No inference should be drawn about any actual person, organisation, product, or situation based on any facts or conclusions of law in this matter. This problem is drafted without knowledge of any person's claims with respect to any trademarks, trade dress, copyrighted works, or other claims of rights that are the same as or similar to those mentioned herein, and the organisers take no position with respect to any person's ownership of or rights to such trademarks, trade dress, artistic works, or other claims of rights.

The Republic of Astravale and the State of Solmere are fictional jurisdictions. Students are free to apply laws from any Asia Pacific country/common law jurisdiction/any other laws that support their arguments.

- B. The present Moot Court Problem involves parties as identified below:

Plaintiff: **Zenith Sports Beverages Ltd.**

Defendant: **Grovermark Beverages Bhd.**



Aggrieved by the decision of the Solmere High Court, Intellectual Property Division (“High Court”), the Defendant preferred the present appeal. The Plaintiff has separately cross-appealed on one limited issue, as set out below.

For reference, please note:

Appellant/Defendant – Grovemark Beverages Bhd.

Respondent/Plaintiff – Zenith Sports Beverages Ltd. (also Cross-Appellant as to Issue 6)

- C. This Appellate Court, like most, will only entertain arguments that fall within the format of “Issues on Appeal,” which in this case are:

Issue 1 – Whether the High Court erred in finding that Respondent’s claimed bottle trade dress is protectable, including in finding that the bottle’s body shape is not functional, and that Respondent’s PEAKVOLT mark and trade dress had acquired well-known-mark status in Solmere notwithstanding the absence of any local registration, distributor, or retail presence.

Issue 2 – Whether the High Court erred in finding that the flip-top dispensing cap used in materially identical form, on Respondent’s PEAKVOLT and PEAKJOLT bottles and on Appellant’s PEAKFRESH bottle is non-functional and forms part of Respondent’s protectable trade dress.

Issue 3 – Whether the High Court erred in finding that Appellant’s PEAKFRESH mark and bottle trade dress are likely to cause confusion with Respondent’s PEAKVOLT mark and trade dress.

Issue 4 – Whether the High Court erred in finding that Appellant’s label artwork infringes Respondent’s copyright in the original graphic design appearing on the PEAKVOLT label.

Issue 5 – Whether the High Court erred in finding that Appellant acted with reckless disregard in adopting the PEAKFRESH mark, trade dress, and label artwork.

Issue 6 – Whether the High Court erred in declining to award profits to Respondent because only Appellant’s regional Bottling & Distribution Partners – not named as parties to this action – earned the profits attributable to Appellant’s infringement.

D. To summarise, the Plaintiff, ZENITH SPORTS BEVERAGES LTD., moved for summary judgment against the Defendant, GROVEMARK BEVERAGES BHD., on claims of trademark infringement, trade dress infringement, and passing off under Sections 9 and 11 of the Solmere Trademarks and Unfair Competition Act, as well as copyright infringement under Sections 13, 14, and 22 of the Solmere Copyright Act, alleging that the Defendant’s PEAKFRESH mark, bottle, and label artwork infringe the Plaintiff’s well-known PEAKVOLT mark, trade dress, and



copyrighted label artwork. The Plaintiff further sought a finding of intent and an accounting of profits earned by the Defendant and its regional Bottling & Distribution Partners. The Defendant cross-moved for summary judgment, contending that the claimed trade dress including the bottle shape and the flip-top cap is functional and unprotectable, that PEAKVOLT has not achieved protectable status in Solmere, that no confusion is likely, that its label artwork was independently created, and that its adoption of PEAKFRESH was made in good faith.

For the reasons set forth hereafter, the High Court granted the Plaintiff's motion for summary judgment on protectability (as to both the bottle shape and the cap), liability (trademark, trade dress, and copyright), and intent. The High Court, however, declined to extend the accounting of profits to revenue earned by the Defendant's Bottling & Distribution Partners, limiting the accounting to the Defendant's own recorded revenue.

Hence, the present appeal.



**IN THE HIGH COURT OF SOLMERE AT DUNMOOR
(INTELLECTUAL PROPERTY DIVISION)**

SUIT NO. IP-2026-071

IN THE MATTER OF:

ZENITH SPORTS BEVERAGES LTD.

...PLAINTIFF

versus

GROVEMARK BEVERAGES BHD.

...DEFENDANT

Zenith Sports Beverages Ltd. ("Plaintiff") instituted a suit against Grovemark Beverages Bhd. ("Defendant") for trademark infringement, trade dress infringement, and unfair competition, alleging that the Defendant's use of the mark "PEAKFRESH" and its bottle design in relation to its cold-pressed functional juice was deceptively similar to the Plaintiff's well-known mark and trade dress "PEAKVOLT," thereby causing a likelihood of confusion. The Plaintiff further alleged that the label artwork appearing on the Defendant's PEAKFRESH bottle infringes the Plaintiff's copyright in the original graphic design appearing on the PEAKVOLT label, and that the Defendant adopted its mark, trade dress, and label artwork with reckless disregard of the Plaintiff's rights. The Plaintiff sought a permanent injunction, a finding of intent, and an accounting of profits, including profits earned by the Defendant's regional Bottling & Distribution Partners.

The Defendant denied the Plaintiff's allegations, asserting that the PEAKVOLT bottle shape and cap are functional designs incapable of protection as trade dress, that the



Plaintiff has no protectable rights in Solmere absent any local registration or retail presence, that its label artwork was independently created by an outside design agency, and that its adoption of the PEAKFRESH name, bottle, and label was made in good faith following a proper trademark clearance search.

Both parties contested each other's claims, and the matter was placed before the High Court of Solmere, Intellectual Property Division, for adjudication on cross-motions for summary judgment. Upon consideration of the pleadings and submissions, the High Court held that the Defendant had in fact infringed the Plaintiff's PEAKVOLT trade dress including both the bottle shape and the cap and copyrighted label artwork, that the PEAKFRESH mark and trade dress were likely to cause confusion with PEAKVOLT, and that the Defendant had acted with reckless disregard in adopting them.

Accordingly, the High Court granted summary judgment to the Plaintiff on protectability, liability (trademark, trade dress, and copyright), and intent, and granted an accounting of profits limited to the Defendant's own recorded revenue. The High Court, however, declined to extend that accounting to the revenue earned by the Defendant's regional Bottling & Distribution Partners, on the ground that those entities are not named as parties to this action.



FINDINGS OF FACT

THE PARTIES

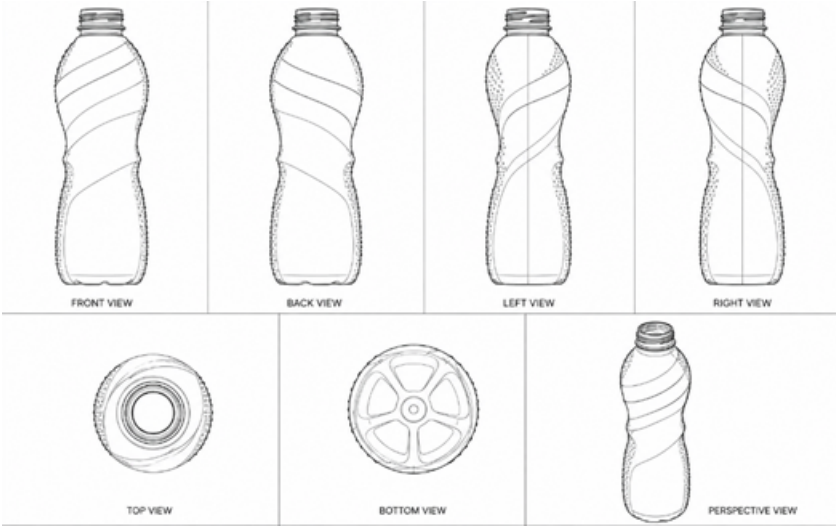
1. Plaintiff Zenith Sports Beverages Ltd. is organized under the laws of the Republic of Astravale, with its principal place of business in the city of Ferncrest.
2. Defendant Grovemark Beverages Bhd. is organized under the laws of the State of Solmere, with its principal place of business in the city of Dunmoor.

PLAINTIFF: ZENITH SPORTS BEVERAGES LTD.

3. Zenith was founded in 2002 by Marcus Oyelaran, a self-made billionaire and prolific engineer-inventor credited as sole or co-inventor on more than 100 patents worldwide spanning consumer-product engineering, materials science, and other fields of technology unrelated to this dispute. Oyelaran, a trained mechanical engineer who had built and sold two earlier technology ventures, turned to beverage development after becoming frustrated, as a competitive amateur triathlete, with the electrolyte-replacement products available to endurance athletes at the time. Working with his own engineering team, Oyelaran personally developed both a proprietary electrolyte formulation and a distinctively shaped bottle, fitted with a flip-top dispensing cap of his team's own design, intended to be easier to grip and drink from without spilling while running or cycling. Although Oyelaran's team considered seeking patent protection for aspects of the bottle during its development, Zenith made a considered decision not to pursue a patent for the bottle itself, relying instead on trade secrecy during development.

Separately, and in anticipation of PEAKVOLT's commercial launch, Zenith's in-house counsel applied to register an industrial design covering the bottle's exterior shape in Astravale. Zenith has since relied on that registration, together with unregistered trade dress protection, for the PEAKVOLT Trade Dress as a whole.

4. The details of Zenith's Astravale industrial design registration are:

Basis	Details
Design:	 The image displays seven line drawings of a bottle from different perspectives: Front View, Back View, Left View, Right View, Top View, Bottom View, and a Perspective View. The bottle has a unique, curved shape with a textured surface.
Proprietor:	Zenith Sports Beverages Ltd.
Article	Bottle
Class:	Class 9-01
Registration No.:	AST-D-33071
Status:	Registered
Application Date:	2nd November, 2003
Registration Date:	18th January, 2004
Filing Basis:	Astravale Designs Act

5. Zenith launched its flagship product, PEAKVOLT, in Astravale in 2004. PEAKVOLT has since become the leading electrolyte sports drink in Astravale and is sold in several neighboring jurisdictions, though never, until the events described below, in Solmere.
6. Since its 2004 launch, PEAKVOLT has been sold in a bottle featuring (i) a concave “wave”-contoured side-wall silhouette, (ii) a diagonal electric-blue-and-orange color-block band across the label, and (iii) a flip-top dispensing cap designed to reduce spillage during physical activity (collectively, the “PEAKVOLT Trade Dress”). Since 2004, Zenith’s marketing materials and website have consistently described the bottle’s shape as “engineered for a secure hold, mile after mile” and have described the cap specifically as “spill-proof by design built for marathon mile markers, not kitchen counters,” language Zenith’s marketing team attributes to Oyelaran’s own experience fumbling with conventional screw-cap bottles during competitive events.
7. Displayed within the diagonal color-block band and the white oval label plate set against it is an integrated graphic treatment comprising: (i) the word “PEAKVOLT” rendered in a bold, geometric sans-serif typeface in which the letter “A” in “PEAK” is stylised as a solid, upward-pointing triangle evoking a mountain peak (the “Peak Triangle Device”); (ii) a radiating sunburst motif of seven rays in white linework, positioned directly above the wordmark within the diagonal band; and (iii) the tagline “ELECTROLYTE SPORTS DRINK” set beneath the wordmark within the oval (collectively, the “PEAKVOLT Label Artwork”). The PEAKVOLT Label Artwork was created in 2004 by freelance illustrator Reva Kalstrom, whom Zenith commissioned under a written agreement assigning to Zenith all copyright in the resulting work. Zenith has continuously used the PEAKVOLT Label

Artwork on PEAKVOLT packaging since 2004. *[An image of Plaintiff's PEAKVOLT bottle, showing the PEAKVOLT Trade Dress and the PEAKVOLT Label Artwork, is attached herewith as **Exhibit A.**]*

8. Being aware of the importance of protecting its brand identity, Zenith secured registration of the trademark PEAKVOLT in Astravale in 2005. The details of Zenith's trademark registration are:

Basis	Details
Mark:	PEAKVOLT (Word Mark)
Proprietor:	Zenith Sports Beverages Ltd.
Class/Goods:	Class 32: Sports and energy drinks
Registration No.:	AST-445218
Status:	Registered
Application Filing Date:	14th February, 2004
Registration Date:	3rd March, 2005
Filing Basis:	Astravale Trade Marks Act
User Claim:	Proposed to be used

9. Since 2011, Zenith has been the title sponsor of the Astravale-Solmere Endurance Circuit, an annual series of marathon and triathlon events held in both countries, including three annual events held within Solmere. PEAKVOLT branding, including the PEAKVOLT Trade Dress, is prominently displayed on course, on participant hydration stations, and in regional sports broadcasts of these events, which are televised throughout Solmere.

10. Zenith's marketing records show that, by 2023, unprompted brand recognition surveys commissioned by the Endurance Circuit's organizers (not by Zenith) found that 61% of Solmere residents who described themselves as "regular runners or cyclists" correctly identified PEAKVOLT as a sports-drink brand when shown the PEAKVOLT Trade Dress with the word mark obscured.
11. In 2018, building on PEAKVOLT's success in Astravale, Zenith launched a second product, PEAKJOLT, in Astravale. It described it as an electrolyte sports drink positioned as a higher-caffeine "power" variant of PEAKVOLT and sold in a bottle using the same wave- contoured silhouette and the same flip-top cap as PEAKVOLT, in a black-and-red diagonal color-block band bearing a white lightning-bolt motif above the wordmark, with the wordmark "PEAKJOLT" rendered in the same typeface and featuring the same Peak Triangle Device in the letter "A." Zenith registered the trademark PEAKJOLT in Astravale in 2019 but did not separately register any industrial design for the PEAKJOLT bottle, relying instead on the existing Astravale design registration, which by its terms covers the shared bottle shape regardless of the product sold in it. *[An image of the PEAKJOLT bottle, showing the same shared shape and cap and the PEAKJOLT Label Artwork, is attached herewith as **Exhibit B.**].* The details of Zenith's trademark registration are:



Basis	Details
Mark:	PEAKJOLT (Word Mark)
Proprietor:	Zenith Sports Beverages Ltd.
Class/Goods:	Class 32: Sports and energy drinks
Registration No.:	AST-552033
Status:	Registered
Application Filing Date:	14th February, 2018
Registration Date:	3rd March, 2019
Filing Basis:	Astravale Trade Marks Act
User Claim:	Proposed to be used

12. In January 2025, citing PEAKVOLT’s popularity in Astravale and seeking to capitalize on what Zenith’s internal launch memorandum (produced in discovery) describes as its “long-standing goodwill in the PEAK family of marks,” Zenith launched PEAKJOLT directly in Solmere. In connection with that launch, Zenith filed applications in Solmere to register the PEAKJOLT word mark. The details of Zenith’s Solmere filings are:



Basis	Details
Mark/Design:	PEAKJOLT (Word Mark)
Proprietor:	Zenith Sports Beverages Ltd.
Class/Goods:	Class 32: Sports and energy drinks
Application No.:	SOL-104822
Status:	Registered
Application Filing Date:	15th January, 2025
Registration Date:	30th June, 2025
Filing Basis:	Solmere Trademarks and Unfair Competition Act
User Claim:	Proposed to be used

13. Zenith’s PEAKVOLT and PEAKJOLT products are sold at a premium retail price point, typically \$2.65–\$2.85 per 590 mL bottle, consistent with their positioning as performance-oriented sports drinks marketed principally through athletic sponsorships and specialty and grocery retailers’ sports-nutrition sets.
14. The Solmere trademark register lists several word marks, unrelated to either party, that incorporate the word “PEAK” in International Class 32, including PEAKRUSH (an energy drink) and PEAK NATURAL (a flavored mineral water), each registered to different proprietors between 2015 and 2023.



DEFENDANT: GROVEMARK BEVERAGES BHD.

15. Grovemark is a mid-sized Solmere beverage manufacturer, historically producing shelf-stable, tetra-pak fruit juices sold in Solmere supermarkets under various brand names unrelated to this dispute. In 2021, seeking to modernize that traditional business, Grovemark recruited Dr. Livia Cortessi as its first Chief Innovation Officer. Dr. Cortessi holds a doctorate in industrial biotechnology and spent twelve years in FMCG research and development at a multinational consumer-goods group, specializing in non-thermal processing and biotech-based extraction methods for extending the shelf life and nutrient retention of fresh juice without the flavor loss associated with conventional pasteurization.
16. In 2022, the R&D team led by Dr. Cortessi identified “functional juice” cold-pressed juice with added electrolytes, produced using her proprietary biotech extraction methods and marketed to compete with sports drinks as Grovemark’s priority growth category.
17. To manufacture the new product’s bottle, Grovemark engaged Halveston Bottle Works (“HBW”), a regional contract bottle manufacturer that had previously supplied Zenith’s PEAKVOLT bottles under license from Zenith until 2021, when Zenith moved its bottle manufacturing in-house. HBW retained the original wave-shape mold tooling developed for Zenith. In an email produced in discovery, an HBW sales representative wrote to Grovemark’s packaging manager: *“Since Zenith went in-house and released the old tooling, we can offer you a very similar wave-grip mold to the one we used to make for the big sports drink brand. It’s a proven design and cheaper for us to run than a new mold. We can also supply the same flip-top cap tooling; it’s become*

something of an industry standard for this bottle format and most of our sports and juice clients now spec it.” Grovemark adopted a materially similar wave- contoured silhouette for PEAKFRESH, together with a flip-top dispensing cap materially identical in mechanism and appearance to the cap used on PEAKVOLT and PEAKJOLT and selected a diagonal blue-and-yellow color-block band for its label.

18. To select the PEAKFRESH name and label design, Grovemark’s marketing team conducted an internal “shelf-appeal” focus group in which participants were shown several candidate names and bottle mock-ups alongside photographs of existing competitor products, including PEAKVOLT, for comparison. Focus-group notes, produced in discovery, record that PEAKFRESH was the participants’ preferred name, with several participants commenting that the bottle shape and cap “reminded them of” existing sports drinks, a quality the marketing team’s summary memo characterized as “a positive, since it signals functional credibility to the consumer.” Separately, Grovemark’s marketing team retained an outside design agency to create label artwork for PEAKFRESH. The creative brief given to the agency, produced in discovery, included a photograph of the PEAKVOLT label (including the PEAKVOLT Label Artwork) among a set of “category reference” images, together with a separate mood board of fresh-produce and botanical packaging references assembled by Grovemark’s marketing team. The agency’s resulting design, displayed within a white oval label plate set against the diagonal color-block band, comprises: (i) the word “PEAKFRESH” rendered in bold, geometric sans-serif typeface, with the letter “A” in “PEAK” stylised as the Peak Triangle Device; (ii) a small stylised leaf motif positioned directly above the wordmark; and (iii) the tagline “COLD-PRESSED ELECTROLYTE JUICE” set beneath the wordmark within the oval (collectively, the “PEAKFRESH Label



Artwork"). *[An image of Defendant's PEAKFRESH bottle, showing the accused trade dress and the PEAKFRESH Label Artwork, is attached herewith as **Exhibit C.**]*

19. Grovemark's legal department instructed an in-house paralegal to conduct a trademark clearance search prior to launch. The paralegal searched the Solmere trademark register and the Solmere industrial designs register for identical or closely similar registered marks or designs in Class 32 and 09-01 and found no conflicting registration. Consistent with Solmere's copyright law, under which copyright arises automatically and is not recorded on any public register, the paralegal did not conduct, and was not asked to conduct, any inquiry into the source or originality of the label artwork the outside design agency produced. The paralegal also did not review the HBW correspondence, did not review the focus-group materials or design brief.
20. Grovemark launched PEAKFRESH in Solmere in March 2024, obtaining Solmere trademark registration for the PEAKFRESH word mark later that year. Grovemark did not apply to register any trade dress or industrial design in connection with PEAKFRESH's bottle or cap. The details of Grovemark's trademark registration are:

Basis	Details
Mark:	PEAKFRESH (Word Mark)
Proprietor:	Grovemark Beverages Bhd.
Class/Goods:	Class 32: Functional beverages; Fruit juices
Registration No.:	SOL-98217
Status:	Registered
Application Filing Date:	2nd March, 2024AA
Registration Date:	19th September, 2024
Filing Basis:	Solmere Trademarks and Unfair Competition Act
User Claim:	Proposed to be used

21. To distribute PEAKFRESH, Grovemark licenses its formulation, brand, and packaging specifications to a network of seven regionally exclusive “Bottling & Distribution Partners” (“BDPs”), each a separately incorporated Solmere entity linked to Grovemark that bottles, markets, and distributes PEAKFRESH within its assigned region under license, a structure common among Solmere beverage manufacturers and adopted by Grovemark for several of its other product lines as well. BDPs purchase concentrate and packaging specifications from Grovemark and retain the retail margin on finished-product sales, remitting a royalty of 6% of net sales to Grovemark for use of the PEAKFRESH trademark, trade dress, and formulation. PEAKFRESH, is sold in a 500 mL bottle at a retail price point, typically \$1.85–\$2.05 and is marketed and shelved in the refrigerated cases. In 2024, the seven BDPs collectively generated approximately \$11.8 million in



PEAKFRESH sales; Grovemark's own recorded revenue from PEAKFRESH, consisting of concentrate sales and royalty income, totaled approximately \$1.6 million.

THE DISPUTE

22. In mid-2024, Zenith's Solmere sponsorship coordinator, attending one of the Endurance Circuit events, observed PEAKFRESH being sold from a refrigerated case adjacent to the event's official PEAKVOLT hydration station and reported the product to Zenith's head office.
23. In August 2024, Zenith commissioned an independent consumer-perception survey of 250 Solmere consumers who identified as regular purchasers of either sports drinks or functional juices. Respondents were shown the PEAKFRESH bottle (with the PEAKFRESH word mark visible) and asked, "Do you believe this product is made by, or affiliated with, the makers of PEAKVOLT?" 44% answered "yes" or "possibly." Grovemark disputes the survey's reliability, noting that respondents were pre-screened as category purchasers likely to be familiar with PEAKVOLT, that no control bottle of different design was tested, and that consumers of sports-nutrition and functional-beverage products, as a class, tend to read ingredient and benefit labeling closely before purchase.
24. Zenith's customer-service records document eleven unsolicited consumer emails and social media messages between June and September 2024 asking whether PEAKFRESH was Zenith's "new juice line" or was "made by the same company as PEAKVOLT."



25. In September 2024, Zenith's counsel sent Grovemark a letter asserting infringement of the PEAKVOLT mark, trade dress, and copyrighted Label Artwork citing, among other things, Zenith's Astravale design registration for the bottle shape as further evidence that the shape was a deliberate, protectable design and demanding that Grovemark cease use of the PEAKFRESH bottle design and label. Grovemark responded that it had conducted a proper trademark clearance search, that its bottle shape and cap reflected only common, functional design features, that its label artwork was independently created by its outside design agency, and declined to change its packaging. PEAKFRESH sales have continued unabated.

PROCEDURAL HISTORY

26. On 30th September 2025, the Plaintiff, Zenith Sports Beverages Ltd., filed suit against the Defendant, Grovemark Beverages Bhd., in the Solmere High Court, Intellectual Property Division, alleging infringement of its trademark and trade dress rights and passing off under Sections 9 and 11 of the Solmere Trademarks and Unfair Competition Act, and copyright infringement under Sections 13, 14, and 22 of the Solmere Copyright Act, and seeking injunctive relief, a finding of intent, and an accounting of profits earned by Grovemark and its BDPs. Grovemark answered, denying all claims, asserting that the PEAKVOLT Trade Dress, bottle shape and cap alike is functional and unprotectable, that the PEAKFRESH Label Artwork was independently created, and asserting that Zenith holds no protectable rights in Solmere.
27. Following discovery, both parties moved for summary judgment before the High Court. The issues before the High Court were framed as follows:



- i. Whether Zenith's claimed PEAKVOLT bottle trade dress is protectable, including whether the bottle shape is non-functional and whether it has acquired well-known-mark status in Solmère.
- ii. Whether the flip-top cap shared, in materially identical form, across PEAKVOLT, PEAKJOLT, and PEAKFRESH is non-functional and forms part of Zenith's protectable trade dress.
- iii. Whether Grovemark's PEAKFRESH mark and bottle trade dress is likely to cause confusion with Zenith's PEAKVOLT mark and trade dress.
- iv. Whether Grovemark's label artwork infringes Zenith's copyright in the PEAKVOLT Label Artwork.
- v. Whether Grovemark acted with reckless disregard in adopting the PEAKFRESH mark, trade dress, label artwork and design of bottle.
- vi. Whether Zenith is entitled to an accounting of profits, including profits earned by Grovemark's Bottling & Distribution Partners.

CONCLUSIONS OF LAW

28. JURISDICTION AND VENUE

The present suit was instituted by Zenith Sports Beverages Ltd. (Plaintiff) against Grovemark Beverages Bhd. (Defendant) before the High Court of Solmère,



Intellectual Property Division, on 30th September 2025, seeking relief for trademark infringement, trade dress infringement, passing off, and copyright infringement.

The High Court of Solmere has been held to be the appropriate forum, since the Defendant sells and distributes PEAKFRESH within the territory of Solmere, where the Defendant also maintains its principal place of business. Accordingly, the High Court has exercised jurisdiction under the Solmere Trademarks and Unfair Competition Act and the Solmere Copyright Act, which vest Solmere courts with authority to adjudicate disputes of the present nature.

29. PROTECTABILITY: NON-FUNCTIONALITY OF THE BOTTLE SHAPE

Section 9 of the Solmere Trademarks and Unfair Competition Act reads as under:-

"9. Absolute grounds for refusal and protection of trade dress. –

(1) A trade mark shall not be registered, and a claimed trade dress shall not be protected under this Act, if it is devoid of any distinctive character.

(3) A mark or trade dress shall not be registered, and shall not be protected under this Act, if it consists exclusively of –

(a) the shape of goods which results from the nature of the goods themselves; or

(b) the shape of goods which is necessary to obtain a technical result; or

(c) the shape which gives substantial value to the goods."

Separately, Section 2(d) of the Solmere Industrial Designs Act, defines a protectable design as follows:

“2(d) ‘design’ means the features of shape, configuration, pattern, ornament, or composition of lines or colours applied to any article, whether in two-dimensional or three-dimensional form, which in the finished article appeal to and are judged solely by the eye, but does not include any mode or principle of construction, or anything which is in substance a mere mechanical device, and does not include any trade mark or property mark, or any artistic work protected under the Astravale Copyright Act.”

High Court’s finding on shape functionality: Zenith’s own marketing materials and website have, since 2004, described the PEAKVOLT bottle’s shape as “engineered for a secure hold, mile after mile”, advertising language Grovemark urges as evidence that the silhouette falls within Section 9(3)(b). The Court finds this advertising probative of the *existence* of a grip advantage but not of the *necessity* of the particular shape, proportions, and curvature Zenith has used since 2004. The record reflects that competing sports-drink and juice manufacturers commonly sell bottles of varying, non-identical profiles, indicating that alternative, equally functional shapes are readily available and that Zenith’s specific silhouette is not itself necessary to obtain the technical result of a secure grip. The diagonal color-block band and the graphic devices within it serve no demonstrated utilitarian purpose and are, on this record, ornamental, arbitrary design choices outside the scope of Section 9(3) altogether. On balance, the Court finds the PEAKVOLT bottle shape non-functional and not excluded from protection under Section 9.

30. PROTECTABILITY: FUNCTIONALITY OF THE CAP

The Section 9(3)(b) functionality factors set out above apply equally to the cap. The question is simply whether they point the same way.

High Court's finding on cap functionality: The record here cuts both ways. In Grovemark's favor: Zenith's own marketing materials describe the cap in explicitly functional terms "spill-proof by design", going beyond the more general grip-advantage language used for the shape. Zenith conspicuously never sought design registration for the cap in any jurisdiction, including in the very Astravale application in which it did seek, and obtain, protection for the shape, a choice the Court finds at least some evidence that Zenith's own engineers and counsel did not regard the cap as the kind of ornamental feature design law protects; and HBW's own sales correspondence describes the flip-top mechanism as having "become something of an industry standard for this bottle format," which is meaningful evidence of functionality under the "simple or inexpensive method of manufacture" and industry-convergence line of the Section 9(3)(b) inquiry. In Zenith's favor: the record also reflects that alternative closure mechanisms conventional screw caps, sport-cap valves, and squeeze closures are commonly used on competing beverage bottles and are, on this record, equally capable of controlling spillage during physical activity, which is the standard "alternative designs" rejoinder this Court applied to the shape above. Zenith notes that an absence of a design filing is not itself proof of functionality, since many protectable ornamental features are never the subject of a design application at all. Weighing these considerations, and mindful that this question is closer than the shape question resolved above, the Court is not persuaded that the cap is essential to achieving a secure, spill-resistant closure to the exclusion of other workable alternatives, and finds the cap non-functional and, together with the shape, part of the protectable PEAKVOLT Trade Dress.

31. PROTECTABILITY: WELL-KNOWN-MARK STATUS

Section 11 of the Solmere Trademarks and Unfair Competition Act reads as under:-

“11. Determination of well-known trade marks. –

(1) In determining whether a trade mark is a well-known trade mark for the purposes of this Act, the Court shall take into account any fact which it considers relevant to establishing the reputation of the trade mark in Solmere, including –

(a) the knowledge or recognition of that trade mark in the relevant section of the public in Solmere, including knowledge obtained as a result of promotion of the trade mark;

(b) the duration, extent, and geographical area of any use of that trade mark;

(c) the duration, extent, and geographical area of any promotion of the trade mark, including advertising, publicity, and presentation at events, fairs, or exhibitions;

(d) the duration and geographical area of any registration of, or application for registration of, that trade mark, to the extent such registration or application reflects the use or recognition of the trade mark; and

(e) the record of successful enforcement of the rights in that trade mark, including the extent to which the trade mark has been recognised as a well-known trade mark by any court.

(2) In determining whether a trade mark is a well-known trade mark, the Court shall not require, as a condition –

(i) that the trade mark has been used in Solmere;

(ii) that the trade mark has been registered in Solmere;

(iii) that an application for the registration of the trade mark has been filed in Solmere;

(iv) that the trade mark is well known in, has been registered in, or has been the subject of an application for registration in, any jurisdiction other than Solmere; or

(v) that the trade mark is well known to the public at large in Solmere.”

High Court’s finding on well-known-mark status: Applying the Section 11(1) factors, the Court finds that Zenith’s sponsorship-driven exposure i.e. thirteen years of continuous, prominent display of the PEAKVOLT Trade Dress at Solmere sporting events and in Solmere sports broadcasts (Section 11(1)(b) and (c)), corroborated by the independently commissioned 61% unprompted-recognition figure among the relevant consumer segment (Section 11(1)(a)) establishes that the PEAKVOLT mark and Trade Dress were well known among the relevant Solmere public prior to Grovemark’s adoption of PEAKFRESH. Consistent with Section 11(2), this finding does not depend on, and is not defeated by, the absence of any Solmere registration, distributor, or conventional retail presence for PEAKVOLT itself. The Court is not persuaded by Grovemark’s timing argument: Section 11(2)(ii) (iii) expressly instructs that well-known-mark status does not require registration or even an application for registration in Solmere, and the Court declines to treat Zenith’s unrelated, later business decision to register a *different* mark PEAKJOLT as either a condition of, or evidence against, PEAKVOLT’s independently established reputation.

32. LIKELIHOOD OF CONFUSION

PASSING OFF

Passing off is a common law remedy that seeks to protect the goodwill and reputation attached to goods or services from being misrepresented by another party, thereby preventing deception and ensuring fair competition. The foundation of the doctrine lies in the principle that no person may mislead consumers into believing that their goods or services are associated with those of



another. An action for passing off requires proof of three essential elements, commonly referred to as the “classic trinity”: (i) goodwill of the first party, (ii) misrepresentation by the other party, and (iii) damage to the first party’s goodwill or business by the actions of the other party.

MULTI-FACTOR ASSESSMENT

This Court assesses likelihood of confusion under a composite, multi-factor test, informed by the comparative multi-factor approach this Court has applied in prior matters including consideration of (a) the nature of the marks, whether word marks, label marks, or composite marks; (b) the degree of visual, phonetic, and conceptual resemblance between the marks and trade dress, considered as a whole rather than dissected into isolated components; (c) the nature and characteristics of the goods; (d) the class of purchasers, including their education, intelligence, and the degree of care they are likely to exercise; (e) the mode of purchasing, including whether goods are self-selected from open shelving or refrigerated cases, as opposed to ordered through an intermediary; and (f) any other surrounding circumstances bearing on the likelihood of confusion, including evidence of actual confusion and the adopting party’s intent.

Applying these considerations to the marks and trade dress together:

- (i) *Nature and degree of resemblance of the marks* — PEAKVOLT and PEAKFRESH are composite marks combining a word element with a distinctive graphic device rather than bare word marks; considered as composites, both wordmarks are set in the same bold, geometric sans-serif typeface, both employ the identical Peak Triangle Device in the letter “A,” and both share the prefix “PEAK,” though they differ in phonetic and conceptual content as to their respective suffixes (“VOLT” evoking



electrical energy, “FRESH” evoking produce); this factor favors Zenith. (ii) *Trade dress similarity* – the bottle shape and cap are, materially identical, and the diagonal color-block band, white oval label plate, and icon-above-wordmark convention are shared compositional choices, differing chiefly in color palette and the specific icon (sunburst versus leaf); this factor favors Zenith. (iii) *Relationship and nature of goods* – both are functional, electrolyte-enhanced beverages increasingly shelved and marketed together as the “functional beverage” category has developed, notwithstanding PEAKFRESH’s smaller 500 mL format and juice-adjacent merchandising; this factor favors Zenith, though less decisively than under the trade dress comparison. (iv) *Class of purchasers and mode of purchasing* – both products are sold through the same convenience stores, supermarkets, gyms, and online grocery platforms, often in the same refrigerated cases, and are typically self-selected by consumers rather than ordered through an intermediary, a mode of purchasing that affords less opportunity for careful discrimination than a counter or prescription sale; Grovemark responds that functional-beverage purchasers, as a class, tend to read ingredient and benefit labeling closely, a genuine, if contested, point of distinction from the ordinary impulse-purchase consumer; on balance, given the retail self-selection environment and imperfect recollection standard, this factor favors Zenith, though the Court acknowledges Grovemark’s consumer-sophistication argument has some force. (v) *Strength of Zenith’s mark and trade dress* – well known among the relevant Solmere consuming public, and reinforced by Zenith’s use of “PEAK” across a family of marks (PEAKVOLT and PEAKJOLT, sharing the Peak Triangle Device and consistent trade dress conventions) that this Court finds capable of enhancing consumer association between “PEAK”-

prefixed marks and a single source; Grovemark responds, with some support in the record, that “PEAK” and mountain/triangle imagery are used descriptively and decoratively across the Solmere beverage industry generally, which this Court finds tends to weaken, without eliminating, the distinctiveness of the shared prefix standing alone, though it does not diminish the significance of the parties’ shared trade dress and graphic-device similarities, which do not depend on “PEAK” alone. (vi) *Actual confusion* – the survey (44% perceived affiliation, albeit with methodological limitations) and eleven documented unsolicited consumer inquiries together constitute meaningful, if imperfect, evidence of actual confusion; this factor favors Zenith. (vii) *Intent* –; the Court finds Grovemark’s conduct reflects, at minimum, a conscious choice to adopt a bottle silhouette, cap, and label composition known to evoke an existing competitor; this factor favors Zenith. (viii) *No other surrounding circumstance is presented.*

High Court’s finding on confusion: Weighing these factors, and notwithstanding the genuine force of Grovemark’s descriptiveness and consumer-sophistication arguments, the Court finds a likelihood of confusion as to both the PEAKFRESH mark and trade dress, and that the elements of passing off are established, and grants summary judgment to Zenith on liability.

33. COPYRIGHT: SUBSISTENCE AND OWNERSHIP

Section 13 of the Solmere Copyright Act reads as under:-

“13. Works in which copyright subsists. –

(1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout Solmere in the following classes of works, that is to say –

(a) original literary, dramatic, musical, and artistic works;

...

(2) Copyright shall subsist in an artistic work from the time it is made, and no registration or other formality shall be required as a condition of the subsistence of copyright under this Act."

Section 19 of the Solmere Copyright Act reads as under:-

"19. Mode of assignment. –

(1) No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by the assignor's duly authorised agent.

(2) The assignment of copyright in any work shall identify such work, and shall specify the rights assigned and the duration and territorial extent of such assignment."

34. COPYRIGHT INFRINGEMENT

Section 14 of the Solmere Copyright Act reads as under:-

"14. Meaning of copyright. – For the purposes of this Act, "copyright" means the exclusive right, subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or a substantial part thereof, namely, in the case of an artistic work –

(i) to reproduce the work in any material form;

(ii) to communicate the work to the public;

(iii) to issue copies of the work to the public, not being copies already in circulation;

(iv) to make any adaptation of the work."

Section 22 of the Solmere Copyright Act reads as under:-

“22. When copyright infringed. – Copyright in a work shall be deemed to be infringed when any person, without a licence granted by the owner of the copyright, does anything the exclusive right to do which is, by this Act, conferred upon the owner of the copyright.”

High Court’s finding on copyright infringement: The Court finds that the PEAKFRESH Label Artwork infringes Zenith’s copyright in the PEAKVOLT Label Artwork under Sections 14 and 22, and grants summary judgment to Zenith on this claim. The Court’s finding rests principally on the materially identical construction of the Peak Triangle Device and the shared selection and arrangement of the label’s compositional elements, and not on any similarity between the specific icon content (sunburst versus leaf), which the Court acknowledges differ.

35. INTENT

Intent is not separately defined by the Solmere Act, but is assessed by this Court by reference to whether a defendant acted with actual knowledge of, or reckless disregard for, a claimant’s rights in adopting a mark, trade dress, or artistic work.

High Court’s finding on intent: The Court finds that Grovemark acted with reckless disregard in adopting the PEAKFRESH mark, trade dress, and label artwork. Grovemark’s own contract bottle manufacturer expressly informed Grovemark, in writing, that the wave-grip shape and the flip-top cap it was offering were similar to, and in the case of the cap descended from, tooling it “used to make for the big sports drink brand”; Grovemark’s own focus-group materials show its marketing team directly compared its candidate bottle designs and names to PEAKVOLT; and the creative brief Grovemark’s marketing team gave its outside label designer included a photograph of the PEAKVOLT label itself. The Court has

considered, and affords limited weight to, HBW's own characterization of the cap as having become "something of an industry standard" a fact bearing on the functionality analysis but that does not, in the Court's view, excuse Grovemark's failure to make any inquiry once it possessed documented, specific knowledge of PEAKVOLT itself, as opposed to generalized awareness of an industry convention. Notwithstanding this documented internal awareness and access, Grovemark's legal department confined its clearance search to the formal trademark and industrial-design registers sources incapable of ever revealing an unregistered trade dress protected under Section 9, an unregistered but well-known mark protected under Section 11, a foreign design registration, or a copyright protected under Sections 13 and 14, none of which are recorded on any such register in Solmere without directing any inquiry into the very competitor its own personnel and outside designer had already identified by name and by image. A company that possesses actual, documented internal knowledge of, and demonstrated access to, a specific competitor's product cannot discharge its duty of reasonable care by confining its legal inquiry to a search methodology it knows cannot capture that competitor's rights. The Court acknowledges Grovemark's argument that the different icon content of the PEAKFRESH Label Artwork is some evidence of good faith as to the label graphic specifically but finds that this goes to the weight of the copyright infringement finding above rather than to whether Grovemark's overall clearance process, taken as a whole, satisfied its duty of reasonable care as to the mark, trade dress, and label artwork collectively.

36. PART OF A MARK

Section 17 of the Solmere Trademarks and Unfair Competition Act reads as under :-

“17. Effect of registration of parts of a mark. –

(1) Where a trade mark consists of several matters, its registration shall confer on the proprietor the exclusive right to the use of the trade mark taken as a whole.

(2) Registration of such a trade mark shall not confer any exclusive right in any matter forming only a part of the whole of the trade mark so registered where that matter is –

(a) not itself the subject of a separate application for registration by the proprietor as a trade mark; or

(b) common to the trade, or otherwise not of a distinctive character.”

37. PROFITS

Section 41 of the Solmere Act reads as under:-

“41. Relief in suits for infringement or for passing off. –

(1) The relief which a Court may grant in any suit for infringement of a trade mark or trade dress, for passing off, or for infringement of copyright, includes injunction, subject to such terms, if any, as the Court thinks fit, and, at the option of the plaintiff, either damages or an account of profits, together with such further orders as the Court considers necessary, including delivery-up of infringing labels and marks for destruction or erasure.”

High Court’s finding on profits: Consistent with Zenith’s election under Section 41(1), the Court declines to award the \$11.8 million in revenue earned by Grovemark’s Bottling & Distribution Partners, separately incorporated entities not named as parties to this action. The Court awards Zenith an accounting limited to the \$1.6 million in revenue directly recorded by Grovemark itself (concentrate sales and royalty income), together with such further relief as may be established at a damages hearing.



WHEREFORE, this Court hereby finds that:

- A. The Plaintiff's PEAKVOLT bottle shape is protectable under Section 9, being non-functional and outside the exclusions in Section 9(3), and has acquired well-known-mark status in Solmere under Section 11; and the Defendant is restrained from using the PEAKFRESH bottle shape, or any bottle shape deceptively similar to the PEAKVOLT bottle shape, in Solmere.
- B. The flip-top cap shared by PEAKVOLT, PEAKJOLT, and PEAKFRESH is non-functional under Section 9(3) and forms part of the Plaintiff's protectable trade dress; and the Defendant is restrained from using that cap, or any cap deceptively similar to it, in connection with PEAKFRESH in Solmere.
- C. The Defendant's PEAKFRESH mark and bottle trade dress are likely to cause confusion with the Plaintiff's PEAKVOLT mark and trade dress, and amount to passing off; and the Defendant is restrained from using the mark PEAKFRESH, or any mark deceptively similar to PEAKVOLT, in relation to functional beverages in Solmere.
- D. The Defendant's PEAKFRESH Label Artwork infringes the Plaintiff's copyright in the PEAKVOLT Label Artwork under Sections 14 and 22 of the Solmere Copyright Act, and the Defendant is restrained from further reproduction, distribution, or display of the PEAKFRESH Label Artwork or any work substantially similar to the PEAKVOLT Label Artwork.
- E. The Defendant acted with reckless disregard in adopting the PEAKFRESH mark, trade dress, and label artwork.



F. The Plaintiff is not entitled to an accounting of the revenue earned by the Defendant's Bottling & Distribution Partners, as those entities are not named as parties to this action; the Plaintiff is awarded an accounting limited to the Defendant's own recorded revenue of approximately \$1.6 million, together with such further relief under Section 41 as may be established at a damages hearing.

SO ORDERED.



EXHIBIT A

Plaintiff's PEAKVOLT bottle, showing the PEAKVOLT Trade Dress and the
PEAKVOLT Label Artwork



EXHIBIT B

Plaintiff's PEAKJOLT bottle, showing the shared bottle shape, cap, and the PEAKJOLT Label Artwork



EXHIBIT C

Defendant's PEAKFRESH bottle, showing the accused trade dress and the accused
PEAKFRESH Label Artwork

