

Bell v. Harley Davidson Motor Co.

539 F.Supp.2d 1249 (S.D. Cal. 2008)

In *Bell v. Harley Davidson Motor Co.*, 539 F.Supp.2d 1249 (S.D. Cal. 2008), plaintiff Craig Bell owned three trademark registrations in the phrase RIDE HARD in connection with apparel, decals, and various merchandise (an example of which from Bell's complaint is provided below on the left). Defendant Harley Davidson uses the phrase ride hard in advertising and various merchandise, always accompanied by a Harley Davidson trademark (an example of which is below on the right). Bell sued for trademark infringement.

On cross motions for summary judgment, the court first applied the *Sleekcraft* multifactor test for the likelihood of consumer confusion to find no likelihood of confusion. The court then further found descriptive fair use. It cited *KP Permanent* for the proposition that "some possibility of consumer confusion must be compatible with fair use[.]" *KP Permanent*, at 121. It then applied the three-step test to find that Harley Davidson does not use the phrase as a trademark, "i.e., to identify the source of its products," *Bell*, at 1258, and uses the phrase only descriptively. The Court explained: "Although Bell protests that such a use does not describe a specific characteristic of Harley's products or goods, courts do not interpret the Lanham Act's fair use language so narrowly. To the contrary, courts have applied the fair use doctrine in situations where the defendant's use of the trademarked phrase described a feeling inherently associated with the phrase or typically experienced by the consumer upon using defendant's product." *Id.* The court further found good faith. "Harley-Davidson demonstrated its intent not to create confusion by including the Harley-Davidson name or bar-&-shield logo on every advertisement and piece of merchandise bearing the 'Ride Hard' phrase." *Id.* at 1259. Though Bell pointed out that Wrangler Clothing Company abandoned "Ride Hard" and substituted "Ride Rough" in response to Bell's 1999 lawsuit, Harley Davidson was not obligated to use an alternative phrase under these facts.



T-Shirt Front Detail