

1-1-2010

Judge to Inventor: You Can't Trademark a Circle

Eric Perrot

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/ipbrief>



Part of the [Intellectual Property Commons](#)

Recommended Citation

Perrot, Eric. "Judge to Inventor: You Can't Trademark a Circle." *American University Intellectual Property Brief*, Summer 2010, 38.

This Blog Post is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in *Intellectual Property Brief* by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

Judge to Inventor: You Can't Trademark a Circle

Keywords

Trademark, Towel industry, 7th Circuit Court of Appeals

Judge to Inventor: You Can't Trademark a Circle

By Eric Perrott

This piece was originally featured as a blog post at www.ipbrief.net. The AU Intellectual Property Brief provides daily content on hot issues, breaking news, and trends within intellectual property law worldwide.

Although his invention was “the most radical beach fashion since the bikini,” Clemens Franek was denied a trademark on his circular beach towel in a ruling by the 7th Circuit Court of Appeals. More than thirty years ago, Franek designed a beach towel that allowed beachgoers to rotate around their towel so they could evenly fry their skin to a golden-brown hue. It was a single-colored fabric circle and it was revolutionary. With the help of Woody Harrelson (yes, THAT Woody Harrelson), Franek’s towel made appearances on The Tonight Show, Entertainment Tonight, and The Oprah Winfrey Show. But thirty years later, the one of a kind beach towel would learn that maybe it wasn’t all that distinctive.

In 2006, Franek noticed that circular beach towels were being sold at both Target and Wal-Mart and brought lawsuits against the two companies. Four years later, Chief Judge Frank Easterbrook ruled that no, Franek cannot trademark a circle. In his opinion, Chief Judge Easterbrook not only espoused several key reasons why Franek’s beach towel could not be trademarked, but managed to do so with a plethora of puns and tongue-in-cheek humor. While C.J. Easterbrook agrees that the towel was the first of its kind, he ruled that giving the indistinct fabric circle a trademark would stifle the

towel industry, effectively smothering future innovations in towel technology. Finally, while invoking “Fit to be Square” by Huey Lewis and the News, Chief Judge Easterbrook explained (in all seriousness) that Franek could have used a design patent to protect his invention, or put some kind of distinctive mark on the towel in order to make it eligible for trademark protections.

