

Five Below Ordered to Halt Sales of Hydrojug Look-Alikes

By Kelcee Griffis 2022-09-06T12:23:27000-04:00

- Hydrojug accused Five Below of selling copycat Aquajug
- Judge cited Facebook group as evidence of customer confusion

Discount retail chain Five Below Inc. must remove certain half-gallon water bottles from its shelves after an Ohio federal court ruled that the bottles infringe Hydrojug Inc.'s design patent and trademark.

Judge Pamela A. Barker of the US District Court for the Northern District of Ohio granted Hydrojug a preliminary injunction Sept. 2 meant to halt the sales of Five Below's \$5 Aquajug.

"Aquajugs are nearly identical to Hydrojugs yet sell for a fraction of the cost of a Hydrojug. Thus, it appears that Defendants not only intended to compete directly with Hydrojug by marketing a bottle with a nearly identical appearance, but to undercut Hydrojug by marketing a cheaper version of a similar bottle," Barker wrote.

According to the [opinion](#), Hydrojug holds a handful of trademarks covering its brand that is meant to appeal to customers with "active lifestyle goals," as well as US Design Patent No. D887,202, which covers a water bottle cap that "twists onto the top of the Hydrojug bottle, snaps closed, and includes a carrying loop." Specifically, the product's logo "incorporates a dumbbell into its design and the Hydrojug lid is designed to maintain a tight seal to prevent leaking and to prevent the flip cap from falling back on the customer while drinking," the opinion said, noting the bottles typically sell for \$10 to \$20 each.

In January, Five Below and its supplier Gossi Inc. started importing and selling similar bottles branded as Aquajug, the opinion said. Hydrojug sued to block the products in May, claiming trademark and design patent infringement, unfair competition, and deceptive trade practices.

In granting the injunction, Barker cited social media posts that indicated consumers were confused about the origin of the cheaper bottles, pointing to screenshots from a Facebook group called "Hydrojug Addicts" in which users discussed the nearly identical jugs for sale at Five Below. In a footnote, Barker said "it is telling" that a member of this group "would confuse an Aquajug as a Hydrojug or Hydrojug-related product."

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She also agreed that, “to an ordinary observer, these lids are nearly indistinguishable” from Hydrojug’s patent-protected lid.

Squire Patton Boggs represents Five Below. Tucker Ellis LLP represents Hydrojug.

The case is [Hydrojug, Inc. v. Five Below, Inc. et al](#) , N.D. Ohio, No. 22-cv-00728, preliminary injunction granted 9/2/22 .

To contact the reporter on this story: Kelcee Griffis in Washington at kgriffis@bloombergindustry.com

To contact the editor responsible for this story: Jay-Anne B. Casuga at jcasuga@bloomberglaw.com

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