

CASE 14

In September of 2006, James Kirby started a company, Redux Beverages, to manufacture and distribute a caffeinated energy drink called "Cocaine." Redux advertised Cocaine as "A legal alternative" and their advertisements played up on the name. Phrases like "Speed in a Can," "Liquid Cocaine," and "Cocaine--Instant Rush" appeared in their advertisements. In fact, the drink contained no cocaine (drug) or any other illegal substance, but was just a highly caffeinated soft drink. One 8.2 oz. can contained 280 mg of caffeine, roughly the caffeine in two cups of coffee.

As one might expect, a controversy developed almost immediately. A councilman from Queens, New York, tried to organize a boycott of the product, claiming that the manufacturer was either ignorant of the tragedy of addiction, or indifferent to the value of human life compared with the value of money. Mayor Michael Bloomberg of New York strongly criticized Redux Beverages for glorifying a product that capitalizes on a destructive narcotic, given the extensive problem of drug abuse and addiction. In reply to his critics, Kirby said that he chose the name because controversy sells, rebelliousness is appealing, and the wordplay is ironic fun. He credited consumers with being able to distinguish between an energy drink and an addictive drug. Kirby reportedly denied that his drink would encourage drug use, but did not deny that the drug might encourage consumption of his drink. Sales increased rapidly.

Meanwhile, Michael H. Davis, a professor at Cleveland State University's College of Law needed an extracurricular project for students in his Copyright, Patent, and Trademark class. After a class discussion of trademarks that could be refused for being "immoral or scandalous," someone mentioned the new drink and Davis soon found five student volunteers to file a trademark opposition against Redux in his name. In their filing, made on October 10, 2006, the students also represented the nonprofit organizations Americans for Drug Free Youth and the Progressive Intellectual Property Law Association. Their filing opposed the trademark for the name, "Cocaine," on the grounds that it was "immoral and scandalous," and furthermore it was "deceptively misdescriptive" since the drink did not in fact contain the drug cocaine.

As a result of the students' filing, the trademark examining attorney, Michael Engel, who had tentatively approved the application for federal trademark, changed his mind and asked for a remand for refusal. On Dec. 6, the United States Patent and Trademark Office turned down Redux's application for the trademarked name, "Cocaine."

The New York Times (December 18, 2006) quoted Professor Davis as saying, "My interest was just the legal interest, to get some experience for the students." He added that they were "far more anti-drug than I'd expected."

In May 2007, Redux pulled Cocaine from the market and initially announced they were changing the name to "Censored." Redux settled on "No Name," as a temporary measure. At the time of the writing of this case, the product contained a blank space where the name should appear with the instructions, "Insert Name Here." Kirby explained

the name change as an opportunity to promote the brand's fun spirit and empower consumers to call the drink whatever they like. As an aid to customers, store displays contain stickers with suggested names they can put on the can, including, "Banned-by-the-man," "Screwed," and "Censored."

According to the company's official website, "In the coming year we're going to release a few new surprises to the market.... So stay tuned. This party's just getting started."