

John Deere Wins TM Suit Against Green And Yellow Rival

By **Bill Donahue**

Law360, New York (October 17, 2017, 4:11 PM EDT) -- Farm equipment giant Deere & Co. has won a trademark lawsuit accusing a smaller rival of copying the green-and-yellow color scheme of its John Deere tractors, the company announced on Tuesday.

Following a weeklong bench trial, U.S. District Judge Thomas B. Russell ruled on Friday that FIMCO Inc. both infringed and diluted Deere's trademark rights by using similar colors on pesticide sprayers. The judge issued an injunction barring the smaller company from using the colors.



John Deere won a ruling that a smaller rival (bottom) copied its green-and-yellow color scheme.

Although farmers are discerning customers and use of the colors by “multiple other companies” had weakened Deere’s trademark rights, Judge Russell said consumers were still likely to be confused by FIMCO’s use of green and yellow.

“It is true, as FIMCO has argued, that some factors weigh in its favor,” the judge wrote. “However, more factors weigh in favor of Deere.”

Judge Russell said that Deere’s tractors and FIMCO’s sprayers — designed to be pulled by a tractor — were closely related and sold in the same marketing channels. FIMCO’s use of the colors looks “highly similar” to Deere’s, the judge said, and there was at least some evidence of actual confusion by consumers.

“The relatedness of the goods, the similarity of the marks, evidence of actual confusion, the marketing channels used and the likelihood of expansion factors all weigh in favor of Deere,” the judge wrote.

Notably, the judge also ruled that Deere’s green-and-yellow color scheme was “famous” for trademark purposes, meaning FIMCO could also be held liable for “diluting” it by using the similar colors.

“Deere has proven to the court that its use of green and yellow on tractors is a famous and distinctive trademark,” the judge wrote.

On Tuesday, an attorney for Deere told Law360 that his client was pleased with the decision.

"Color trademarks are uncommon, and we are not aware of any color trademark case going through trial before this one," said Simon Frankel of Covington & Burling LLP. "But John Deere has one of the strongest and most widely recognized color trademarks in the country, as it has been using green and yellow on its farming equipment for more than a century."

Deere sued in April 2015, accusing FIMCO of a “deliberate and willful attempt to piggyback on Deere’s commercial success.” The suit claimed that FIMCO’s lawyers had admitted that the company chose the colors so that consumers could “match the colors” of their sprayer to their tractor.

Eventually, FIMCO made that one of its central defenses. The company argued that Deere’s accusations were barred by the doctrine of aesthetic functionality — that competing companies need to be able to use Deere’s color scheme to be able to offer matching colors.

In March, Judge Russell shot that argument down, saying FIMCO could offer matching colors without copying Deere’s exact scheme.

“FIMCO has still made no attempt whatsoever to explain why the use of a different color scheme involving green or yellow (just not both) would not constitute a comparable alternative that would allow it to satisfy the needs of its customers,” the judge wrote at the time.

Following Friday’s order, FIMCO has 60 days to explain how it will comply with the injunction.

Representatives for the companies did not immediately respond to request for comment on Tuesday.

Deere is represented by Simon Frankel, Rebecca Jacobs and Ethan Forrest of Covington & Burling LLP.

FIMCO is represented by Gregory C. Scaglione of Koley Jessen PC LLO.

The case is Deere & Co. v. FIMCO Inc., case number 5:15-cv-00105, in the U.S. District Court for the Western District of Kentucky.

--Editing by Stephen Berg.

Update: This story has been updated with a statement from Deere's attorney.

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