

Juicy Whip Inc. v. Orange Bang Inc.

72 U.S.P.Q.2d 1385 (Fed. Cir. 2004)

Facts

In its appeal to the Federal Circuit, Juicy Whip, Inc. sought recovery for profits lost on the sales of unclaimed syrup used in its patented dispenser. Juicy Whip is the assignee of United States Patent 5,575,405, which is directed to a post-mix beverage dispenser that simulates the appearance of a pre-mix beverage dispenser in order to promote sales. In the district court, a jury found that Orange Bang infringed the '405 patent and awarded Juicy Whip compensatory damages totaling about \$640,000. However, Juicy Whip's motion to introduce testimony on its lost profits from syrup sales had been denied because the district court concluded that Juicy Whip failed to establish that the syrup and the patented dispenser constituted a single functional unit.

Rules and Analysis

On appeal, Juicy Whip argued that the district court erred by denying it the opportunity to present to the jury its theory of lost profits from lost syrup sales because the patented dispenser and the unclaimed syrup were sufficiently functionally related to justify recovery of lost profits. Relying on the entire market value rule set forth in *Rite-Hite Corp. v. Kelley Co.*, 56 F.3d 1538 (Fed. Cir. 1995), the Federal Circuit found that there was a functional relationship between the unclaimed syrup and claimed dispenser because the dispenser needs syrup and the syrup is mixed in a dispenser. The functional relationship between a patented device and an unpatented material used with it is not precluded by the fact that the device can be used with other materials or that the unpatented material can be used with other devices. The case was remanded to the district court for further proceedings.