

LOUNGING ON THE SHORE: FLORA-BAMA LOUNGE LOSES TO MTV FLORIBAMA SHORE IN TRADEMARK INFRINGEMENT APPEAL

Late last year, the federal 11th Circuit Court of Appeals in Atlanta ruled in favor of the creators of the MTV reality series "Floribama Shore" in a trademark infringement lawsuit brought by the Flora-Bama Lounge in Pensacola over the right to use the term "Floribama." *MGFB Properties, Inc. v. Viacom Inc, fka MTV Networks*, Case No. 21-13458, 2022 WL 17261122 (11th Cir. 2022).

The Flora-Bama Lounge is a regionally famous restaurant and bar on the Gulf shore which has been in business since 1964. The company and related entities own numerous trademarks registered with the U.S. Patent and Trademark Office and the states of Florida and Alabama for bar and restaurant services and various entertainments services, including arranging, organizing, conducting, and hosting "social entertainment events," live musical performances, and "competitions for fish throwing." The Plaintiffs have aggressively defended their trademarks, having sent more than 80 cease-and-desist letters to businesses across the region.

The Plaintiffs and their trademarks have been featured in works by entertainers such as Jimmy Buffett and Kenny Chesney, who performed on its beachfront stage in front of thousands of fans at a televised concert in 2014, and two songs have been named after the Lounge, Chesney's "Flora-Bama" and Neil Dover's "FloraBama Time." The name "Flora-Bama" is also featured in a few book titles, including "Food n' Fun at the Flora-Bama," and "Bushwhacked at the Flora-Bama," and a couple of films, sold on DVDs at the Lounge's gift shop.

The Defendant Viacom is a global media and entertainment company that operates several television channels, including MTV, VH1, Nickelodeon, and Comedy Central. In 2009, it and its related entities released a hit television series on MTV called "Jersey Shore," featuring "a group of fun-loving 20-somethings who lived together in a beach house in Seaside Heights, New Jersey." The show lasted six seasons and spawned several international spin-offs. The Defendants then began to develop another Shore series, this one focused on Southern beach culture on the Gulf of Mexico from the Florida panhandle to Alabama and Mississippi.

As it was developing the show, the Defendants approached the Plaintiffs about using the Lounge for the show and casting calls. The Plaintiffs allowed the Defendants to have a few casting calls at the Lounge, but nothing more. Ultimately, the Defendants chose Panama City Beach, over 100 miles east of the Lounge, as the filming location for the series. They decided to name the show "MTV Floribama Shore" and modeled the logo after the Jersey Shore logo to convey its connection to the Shore franchise. The logo is very different from the Plaintiffs' logo, as one can clearly see.

In October 2017, about a month before the new show was set to premiere, the Plaintiffs sent the Defendants a cease-and-desist letter alleging trademark infringement and asking them to change the name of the series. Viacom refused, stating that "titles of artistic works are entitled to substantial deference against [trademark infringement] and unfair competition claims."

The series premiered on schedule in November 2017 and has continued through a total of four seasons. In August 2019, after the second season aired, the Plaintiffs sued in federal court, alleging trademark infringement, trademark dilution, unfair competition, and related claims based on their allegations that the names were confusingly similar to the public. They sought an injunction, damages and profits, claiming that the Defendants had intentionally derived its series' title from the Lounge's registered trademark "Flora-Bama."

In April 2021, the Defendants moved for summary judgment on all of the Plaintiffs' claims. In response, the Plaintiffs maintained that the series had caused confusion among their patrons that damaged their brand. The Plaintiffs submitted emails, letters, and declarations from their bartenders and regular musical acts stating that there had been multiple instances of confusion between the series and the Lounge. They also submitted a survey conducted by a law professor which found that 22% of the respondents were confused as to the sponsorship, approval, or affiliation between the Lounge and the series. The district court granted summary judgment for the Defendants, and the Plaintiffs appealed.

In its ruling on appeal, a three-judge panel of the 11th Circuit noted that the case highlights the interplay between the interests of trademark owners and consumers in avoiding confusion about the source or sponsorship of products and the First Amendment interests of the creators of artistic works and the public in allowing freedom of expression and the free flow of ideas.

Citing a landmark Second Circuit case for balancing trademark and First Amendment rights, *Rogers v. Grimaldi*, 875 F.2d 994 (2d Cir. 1989), which had been brought by the Hollywood performer and dancer Ginger Rogers, the Court held that the show's title was relevant to the content of the series as it refers to the geographic area and the southern beach subculture the creators sought to portray. It noted that the title is clearly not meant to reference the bar, which is located on the Florida-Alabama state line, because it includes the MTV mark and the word "shore," taken from its iconic franchises. Accordingly, the Court found that the Defendants had not infringed the Plaintiff's trademarks and upheld the district court's ruling in favor of the Defendants.

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FLORA-BAMA

