

24-1016 RISEANDSHINE CORPORATION V. PEPSICO, INC.

DECISION BELOW: 41 F.4th 112

LOWER COURT CASE NUMBER: 23-1176

QUESTION PRESENTED:

Courts in every circuit consider several factors in determining whether an alleged trademark infringer's use "is likely to cause confusion" under 15 U.S.C. § 1114. Chief among those factors is the trademark's strength, that is, its level of distinctiveness. Twelve circuits consider trademark strength an issue of fact. The Second Circuit stands alone in considering it a question of law.

The question presented is:

Whether trademark strength is a question of fact in a likelihood-of-confusion analysis under 15 U.S.C. § 1114.

CERT. GRANTED 6/29/2026