

## 'Reserve' Variations Can't Be Trademarked, Judge Rules

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### **Summary**

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### **Body**

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A California federal judge on Friday tossed a trademark suit brought by restaurant and hotel reservation software maker Efficient Frontiers Inc. that alleges the restaurant app startup Reserve Media Inc. infringed its “reserve” trademarks, finding that the word is common in the hospitality industry and can’t be trademarked.

In an order granting Reserve Media summary judgment, U.S. District Judge Dean D. Pregerson found that Efficient Frontiers’ family of marks invokes the common verb “reserve” in a business context where there is “almost no other substitute” for the service being offered. The judge said that allowing the software maker to have a monopoly over the word and variations of it would unfairly inhibit competitors across a range of businesses dealing with reservations from invoking a common word to describe their products and services.

“[R]eserve’ is one of a few words so essential to economic activity across domains that courts should be particularly cautious about allowing any single private actor to monopolize the use of the term,” Judge Pregerson said.

The ruling marks an end to a suit launched by Efficient Frontiers against Reserve Media in July 2015, alleging Reserve Media’s products infringe eight variations of its “reserve” marks. The suit asserted federal and state causes of action for trademark infringement and unfair competition.

In earlier rulings, Judge Pregerson found that six of Efficient Frontiers’ marks were not valid and protectable as a matter of law, because they are descriptive and don’t have a secondary meaning. The judge also concluded that there was no triable question as to Reserve Media’s willful infringement for any mark. The two trademarks that were not addressed in the earlier rulings were two variations of Efficient Frontiers’ “Reserve Q” marks.

In Reserve Media’s motion for summary judgment, the startup argued that Efficient Frontiers’ marks are descriptive and don’t have a secondary meaning. Efficient Frontiers’ selected the letter “Q” as a play on the word queue, or a line at a restaurant, Reserve Media said. Given that a queue ordinarily refers to a line of people waiting for

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something, Reserve Media said that a “literal and unimaginative consumer” would be able to understand that “Reserve Q” refers to a service for managing reservations, and therefore the term can’t be trademarked.

Efficient Frontiers responded that the two marks are at a minimum suggestive, noting that a consumer might understand “Q” to have a range of meanings including just the letter, the word “cue” or the idea of “questions.” Efficient Frontiers argued that although Q may have been selected because it evokes the idea of a “queue,” it takes at least some imagination to connect the two concepts.

Efficient Frontiers further contended that, even if Q immediately signified “queue,” that doesn’t accurately describe its software, which doesn’t enable someone to “reserve a queue” or a spot in a queue. Efficient Frontiers’ software deals with table reservations — which often can be done in advance and do not require patrons to stand in a queue — and also enables businesses to leverage reservations for marketing purposes, Efficient Frontiers said.

But on Friday, the judge ruled that even though the Efficient Frontiers didn’t only use the word “reserve,” the majority of the marks at issue appended the word “reserve” with equally common words such as “it” or “cloud” or “interactive.” In all of the instances, an “entirely unimaginative, literal-minded person” would understand the significance of the reference, the judge said, and therefore Efficient Frontiers’ marks are “fundamentally weak.”

Judge Pregerson also found that Efficient Frontiers’ “Reserve Q” marks are commercially weak, noting that Efficient Frontiers has generated less than \$15,000 in its “Reserve Q” product sales between 2011 and 2015.

Reserve Media’s products also are unlikely to cause confusion among consumers about Efficient Frontiers’ software products, because the products are different, and the Efficient Frontiers’ customers are restaurant owners who are “sophisticated decision-makers and professionals,” who can be expected to exercise a greater degree of care, the judge said.

Representatives for Reserve Media and counsel for both parties didn't immediately respond Monday to requests for comment.

Reserve Media is represented by Dylan Ruga and Ji-In Lee Houck of Stalwart Law Group.

Efficient Frontiers is represented by Thomas S. Kidde and Daniel C. DeCarlo of Lewis Brisbois Bisgaard & Smith LLP.

The case is Reserve Media Inc. v. Efficient Frontiers Inc., case number 2:15-cv-05072, in the U.S. District Court for the Central District of California.

--Editing by Orlando Lorenzo.

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