

## Whirlpool victorious in dispute with Chinese stand mixer manufacturers

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### UNITED STATES OF AMERICA

Legal updates: case law analysis and intelligence

- The district court granted Whirlpool's request for a preliminary injunction to stop Sanlida from selling its stand mixers
- The Fifth Circuit dismissed Sanlida's argument that the district court did not have the power to enter a preliminary injunction
- The district court had correctly found that Whirlpool's registered mark was not functional and was thus valid

In [\*Whirlpool Corp v Shenzhen Sanlida Electrical Technology Company Ltd\*](#) (Case No 22-40376, 25 August 2023), the US Court of Appeals for the Fifth Circuit has ruled in favour of Whirlpool, preventing two Chinese manufacturers from marketing infringing stand mixers.

## Background

Whirlpool has been lauded for decades for its KitchenAid stand mixer. Its unique design has been the subject of millions of dollars in advertising, is a registered trademark, and has become a staple of the cooking industry. Sanlida, a China-based manufacturer, started to sell in the United States a stand mixer of its own.

Sanlida's stand mixer, however, was significantly similar in design to Whirlpool's, leading Whirlpool to file a complaint against the Chinese company, asserting claims of trademark infringement and dilution, trade dress infringement and unfair competition. Whirlpool also filed a motion for a preliminary injunction, seeking to stop Sanlida from selling, distributing, advertising or promoting its mixers.

The district court granted the preliminary injunction and Sanlida appealed to the Fifth Circuit.

## Decision

Ruling in favour of Whirlpool and affirming the district court's grant of a preliminary injunction, the court held that Sanlida's mixer design was infringing because it was likely to cause consumer confusion with Whirlpool's valid design mark. The opinion also addressed whether Sanlida was given sufficient service of process, and whether the district court erred in granting a preliminary injunction.

First, Sanlida argued that the district court did not have the power to enter a preliminary injunction, because it did not voluntarily appear and was not served with the complaint or the motion. The Fifth Circuit disagreed. It reasoned that [Federal Rule of Civil Procedure 65\(a\)](#) does not require service of process, but only requires that the non-moving party have notice of the hearing, in order for a court to have authority to issue a preliminary injunction. There was no dispute that Sanlida received notice, given that its counsel was present and participated in the district court hearing.

Next, the court analysed whether the district court abused its discretion by granting a preliminary injunction. For a preliminary injunction to be proper, the moving party must show:

1. a likelihood of success on the merits;
2. irreparable harm;
3. balance of harms; and
4. a public interest.

For the first factor, the court assessed the validity of the mark and whether there was a likelihood of confusion. Regarding validity, Sanlida contended that the design Whirlpool was asserting was required for the mixer to work, making it functional. The court cited a lack of evidence demonstrating that the exterior design was the reason the mixer works. The record lacked any evidence suggesting that the shape of the mixer affected its "cost or quality". Nor was there any evidence that the design gave Whirlpool a significant non-reputational advantage, as indicated by competing products with other, distinct designs.

Turning next to the likelihood of confusion analysis, the court found no clear error in the district court's determination. The court noted the similarity of the designs, the parties' trade channels, and their purchasers. While there may have been debate surrounding the other factors, the court determined that that was not enough to find clear error by the district court.

Turning last to the final three factors, the court found that Sanlida had failed to rebut the Lanham Act's presumption of irreparable harm, which flows from a finding of a likelihood of confusion ([15 USC § 1116\(a\)](#)). Moreover, Sanlida only suffered pecuniary harm, which is "presumptively reparable". Finally, the court noted that the public also has an interest in the effective enforcement of trademark law, to prevent consumer confusion.

Finding no errors by the district court, the Fifth Circuit affirmed the grant of the preliminary injunction.

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