

On My Mind Blog

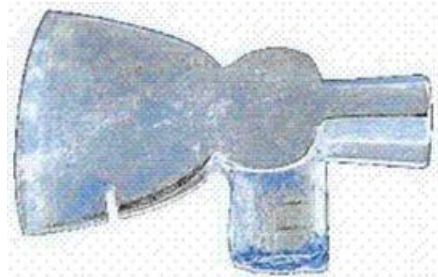
Lizzie Borden House has its Infringement Claim Chopped Down

01.09.2025 By [Eric J. Shimanoff](#)

This article is about a 2024 decision by the U.S. Court of Appeals for the First Circuit arising out of the “trial of the century” in 1892 in which a jury acquitted Lizzie Borden of all charges that she had murdered her father and stepmother. This sparked the rhyme,

Lizzie Borden took an axe
And gave her mother forty wacks
And when she saw what she had done
She gave her father forty-one.

A bed and breakfast named “Lizzie Borden House” is operated in Fall River, Massachusetts by US Ghost Adventures, LLC. Ghost Adventures also provides ghost tours, and it owns incontestable federal service mark registrations for “restaurant and hotel services” of the name LIZZIE BORDEN and of a notched hatchet blade design.



Miss Lizzie’s Coffee LLC opened a coffee shop named “Miss Lizzie’s Coffee” next door. Its signs displayed that name below hatchets with blood spatters.



Some visitors assumed, incorrectly, that the Lizzie Borden House and Miss Lizzie's were related. For example, some tour customers were frustrated because Lizzy Borden House did not permit food or drink on its tours but the customers thought it had just sold them Miss Lizzie's coffee.

District Court

Ghost Adventures sued Miss Lizzie's in U.S. District Court for the District of Massachusetts alleging trademark infringement and unfair competition and seeking a preliminary injunction.

The district court held that Ghost Adventures had failed to show a likelihood of success on the merits, and it denied the preliminary injunction.

The district court found:

- There was no likelihood of confusion because Miss Lizzie's associated its business with the historical story of Lizzie Borden, not the mark "Lizzie Borden."
- Miss Lizzie's hatchets had a handle and an unnotched axe blade spewing blood unlike the notched hatchet design of Ghost Adventurers.
- Any confusion was caused by the proximity of the establishments, their common but independent reliance on the Lizzie Borden tale, and the tendency to associate services related to a historical site with the site itself. The court remarked that "the same issues would arise if miss Lizzie's called its café 'Forty Wacks Coffee' and used a different image as its logo."
- The businesses were not in direct competition. Lizzie Borden House sold tickets or reservations to sophisticated buyers from afar whereas Miss Lizzie's sold food or coffee to passersby.
- The parties relied on different forms of advertising.
- Miss Lizzie's displayed a sign explicitly disclaiming any relationship with Lizzie Borden House.

Circuit Court

On appeal, the U.S. Court of Appeals for the First Circuit found no abuse of discretion by the district court.

The circuit court found:

- Miss Lizzie’s reference to “Lizzie” was to the lore, not to the mark.
- The two design marks were dissimilar in overall commercial impression.
- Although both parties offered “hospitality services” in physical proximity to each other and traded on the Lizzie Borden tale, this “wider lens of hospitality services” did not cast doubt on the appropriateness of the district court’s decision that the parties marketed different goods and services to different consumers.
- Any confusion due to proximity or common reference to historical lore was not of the type that trademark owners may prevent.
- The uncontradicted evidence of actual confusion stemmed from the Lizzie Borden story, in its own right, not from the manner in which Ghost Adventures used that story.
- The trademark rights of Ghost Adventures did not mean that it’s mark was commercially strong enough to displace consumers’ association with the real Lizzie Borden.
- The conspicuous disclaimer on the sign taped to Miss Lizzie’s storefront further supported the district court’s decision.

Accordingly, circuit court affirmed the judgment of the district court denying the preliminary injunction.

[US Ghost Adventures LLC v. Miss Lizzie’s Coffee LLC, Case No. 23-2000 \(First Cir. November 15, 2024\)](#)

Author’s Note:

At first these court decisions seem questionable. How can a coffee shop be permitted to open next to an established hotel and museum, using a mark incorporating the entirety of the hotel’s name which is registered as a mark for “restaurant and hotel services,” and using a design motif of an axe when the hotel also uses an axe motif, especially where there has been actual confusion?

The answer seems to lie in the fact that both establishments are trading on a common historical occurrence in which neither party could claim exclusive rights. In that context, the differences in the names, the differences in the services, the differences in the designs, and the use of a disclaimer were found to be enough to avoid a finding of a likelihood of confusion.

Looked at through this lens, this conclusion seems reasonable. However, the opposite conclusion might be equally reasonable.

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Eric advises on and litigates complex intellectual property matters concerning trademarks, copyrights, unfair competition, counterfeiting, domain names, false advertising, trade secrets, publicity rights, patents, the Internet, websites, social media platforms, mobile apps, content clearance, licensing and other agreements.