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District Court Decides There's No Confusion Between Jake's and Jake & Oliver's

*Fine Dining Restaurant,
House of Brews Seek
Different Clientele*

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The owners of Jake's Bar & Grill in the Manayunk section of Philadelphia have lost their bid to force a Center City restaurant named Jake & Oliver's House of Brew to change its name.

U.S. District Judge Ronald L. Buckwalter ruled that the Manayunk restaurant, which is known simply as "Jake's," isn't likely to be confused with Jake & Oliver's because their names and the logos on their signs are significantly different.

"Certainly it is possible that one seeing the name Jake & Oliver's will think of Jake's, but that is not the same as being confused by it," Buckwalter wrote.

The two establishments also cater to different crowds and offer substantially different dining experiences, Buckwalter found.

Jake's, which opened in 1987, is routinely listed among the city's most popular fine dining restaurants, with just five ranking ahead of it in this year's Zagat Survey.

By contrast, Jake & Oliver's, which opened in September 1995 near 3rd and Market streets, is "a more casual dining experience" known mostly for the variety of



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beers it has on tap. While 90 percent of Jake's patrons make reservations to partake of its "casually elegant and fine dining experience," Buckwalter found that at Jake & Oliver's, folks generally just show up and are "less interested in the unique dining experience," than in its micro-brews, snacks and dancing.

After a preliminary injunction hearing in which 27 witnesses testified, Buckwalter said the evidence suggested that "restaurant goers who select Jake's are attentive to what they are seeking in a dining experience. They would, it follows, not likely be confused by a place which promotes itself as a house of brews."

Buckwalter rejected the arguments of Jake's lawyers, Manny Pokotilow and Mona Gupta of Caesar Revise Bernstein Cohen & Pokotilow, who said the two names were so similar that the public would confuse them.

Instead, he said, the trademark "Jake & Oliver's" is "different from Jake's and any reasonably prudent consumer will realize the difference."

And unlike Jake & Oliver's, Buckwalter said "Jake's ... is not a brew house; does not promote dancing; does cater to a slightly older crowd; does tend to attract people

who wish to do something special on a special occasion; and does have a clientele, 90 percent of which consists of people who have made reservations in anticipation of a fine dining experience."

Jake & Oliver's lawyer, David T. Shulick of Frank & Rosen, said the ruling clears the way for a new Jake & Oliver's to open in Bala Cynwyd, just minutes from Jake's.

"We're opening up in a week and a half," said Shulick, who tried the case along with his partner, Alan L. Frank, and Robert B. Famiglio of Famiglio & Massinger.

Although Buckwalter's ruling is only a denial of a preliminary injunction motion, Shulick said the rulings are so strongly in favor of Jake & Oliver's that the folks at Jake's "are going to have to drop it."

Pokotilow said he will be asking Buckwalter to reconsider his ruling because the judge applied the wrong legal test.

"You don't have to show actual confusion to prove likelihood of confusion," Pokotilow said.

Pokotilow said Buckwalter also failed to consider the effects of Pennsylvania's anti-dilution statute which allows for the enforceability of "locally famous" trademarks even where no likelihood of confusion is shown.

(Copies of the 12-page opinion in Cooper v. Dearhearts Inc., PICS NO. 97-1307, are available from The Legal Intelligencer. Please call the Pennsylvania Instant Case Service at 800-276-PICS to order.)