

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HANSEN BEVERAGE COMPANY, a
Delaware corporation, dba
Monster Beverage Company,
Plaintiff-Appellee,

v.

NATIONAL BEVERAGE CORP., a
Delaware corporation; SHASTA
BEVERAGE INC., a Delaware
corporation; NEWBEVCO INC., a
Delaware corp.; FREEK'N BEVERAGE
CORP., a Delaware corporation,
Defendants-Appellants.

No. 06-56390
D.C. No.
CV-06-05470-ER
ORDER

Filed August 17, 2007

Before: William C. Canby, Jr. and Sidney R. Thomas,
Circuit Judges, and Suzanne B. Conlon,* District Judge.

ORDER

The motion of Hansen Beverage Company to file its Motion to Vacate Opinion under seal is GRANTED, and its motion and reply to the opposition are ordered sealed.

On June 29, 2007, we filed our opinion in the appeal by National Beverage Company of a preliminary injunction. *See Hansen Beverage Co. v. National Beverage Co.*, slip op. 7699, 2007 WL 1859607 (9th Cir. 2007). Our mandate has

*The Honorable Suzanne B. Conlon, Senior United States District Judge for the Northern District of Illinois, sitting by designation.

not yet issued. It has now been made known to us that, on June 8, 2007, the parties had executed a settlement agreement that, among other things, stipulated that the preliminary injunction that was the subject of the appeal was made permanent. As a consequence, there was no longer a controversy between the parties over the preliminary injunction at the time we issued our opinion, and the case was moot.

We lacked jurisdiction to decide a moot case. *See In re Pattullo*, 271 F.3d 898, 900 (9th Cir. 2001). We accordingly VACATE our opinion and decision of June 29, 2007, and DISMISS this appeal. *See id.* at 902.

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