

# Patent Office Rejects NJ's Challenge to Pizzeria Logo Likened to Parkway Signs

By [Charles Toutant](#) (/author/profile/Charles Toutant/) | May 16, 2018 at 05:54 PM

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The logo of the Boardwalk Pizza company, based in Florida, and the official insignia of the Garden State Parkway.

A three-judge panel of the [U.S. Patent and Trademark Office has ruled](#) (<https://images.law.com/contrib/content/uploads/documents/292/turnpike.pdf>) that a Florida pizzeria may register and use a logo that closely resembles the green and yellow signs of the Garden State Parkway.

Tuesday's ruling by the USPTO's Trademark Trial and Appeal Board denied the New Jersey Turnpike Authority's application to halt trademark registration of a logo by Jersey Boardwalk Pizza Co. The pizzeria's signage is similar to that of the Garden State Parkway, but confusion between them is unlikely because the goods and services offered by each are dissimilar, the Trademark Trial and Appeal Board ruled.

The board, in *New Jersey Turnpike Authority v. Jersey Boardwalk Franchising*, rejected the highway authority's claim that its logo was associated with restaurant services because the Turnpike Authority leases space to food vendors, including McDonald's, Starbucks and Pizza Hut, at its rest areas. Administrative trademark judges Thomas Wellington, Angela Lykos and Cynthia Lynch noted that the Turnpike Authority is essentially a landlord to those food vendors, rejecting the authority's assertion that those companies are licensees of the Garden State Parkway trademark.

"We cannot conclude that plaintiff has proven common law rights in its mark for restaurant services. We lack proof that consumers of these restaurants would have encountered plaintiff's mark in connection with these services," the panel said.

The judges also rejected the Turnpike Authority's claim that the pizzeria acted in bad faith because it proceeded with its plans even after receiving a cease-and-desist letter from the Turnpike Authority, which operates the Garden State Parkway.

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"We infer no bad faith from defendants' creation of a New Jersey-themed motif for its restaurants, or from submission of the application even after plaintiff's cease-and-desist letter, because as Defendants expressed in their response to the letter, and as we find here, the applied-for mark is not likely to cause consumer confusion," the judges said.

The board did find in favor of the Turnpike Authority on some other issues in the case. It granted the authority's request to cancel an earlier version of the pizzeria's trademark, which is no longer in use. It also denied the pizzeria's counterclaim seeking to cancel the Turnpike Authority's registration of its own logo.

"The Turnpike Authority took a position that nobody could have a mark that was similar to theirs. The decision is novel because, if you read the opinion, the New Jersey Turnpike Authority has been sending cease-and-desist letters to companies around New Jersey, forcing them to stop using a logo similar to the Garden State Parkway logo. This is the first company that stood up to them and ultimately got a determination in their favor," said Justin Klein of Marks & Klein in Red Bank, New Jersey, who represented the pizzeria along with the firm's JoyAnn Kenny.

"It's been four long years, there have been a lot of resources spent on this, on both sides. [The pizzeria owners] are relieved that it's over. They just want to sell pizza," Klein said.

Klein added that the outcome of the case would not prevent the Turnpike Authority from licensing its intellectual property, including the Garden State Parkway logo, and collect royalties for its use on items such as T-shirts and mugs.

The Turnpike Authority's lawyer was Ronald Israel of Chiesa, Shahinian & Giantomasi in West Orange, New Jersey. He did not respond to calls about the ruling.

A spokesman for the New Jersey Turnpike Authority, Thomas Feeney, said in a statement, "We are pleased that the board upheld the validity of our trademark, and we're pleased that they canceled Boardwalk Pizza's existing logo registration. We are disappointed and obviously disagree with the board's decision regarding Boardwalk Pizza's pending logo application, and we are exploring our appeal options."

Tuesday's decision is subject to appeal at the U.S. District Court or to the U.S. Court of Appeals for the Federal Circuit.

Jersey Boardwalk Pizza, operated by former New Jersey residents, has three locations in Florida—Tavernier, Homestead and Key Largo, and will soon open a fourth, in Kendall. Playing up its connections to New Jersey, the company seeks franchisees for additional locations.

The Turnpike Authority sued the pizzeria over the look-alike logos in July 2014. U.S. District Judge William Martini **dismissed that case in March 2015,** (<https://www.law.com/njlawjournal/almID/1202721781772/turnpike-authority-suit-over-lookalike-logo-tossed/>) finding the Florida eateries lack sufficient contacts with New Jersey to make it subject to personal jurisdiction in the state. The Turnpike Authority filed its case with the USPTO in October 2014.

The pizzeria dispute is not the only one over businesses adopting logos similar to that of the Garden State Parkway. In 2016, the New Jersey Turnpike authority **was sued** (<https://www.law.com/njlawjournal/almID/1202771891934/winery-sues-nj-turnpike-authority-to-defend-right-to-use-highway-sign-in-logo/>) by a Hunterdon County, New Jersey, winery that sells a line of wines under the label "What Exit." The winery, in *DW Vineyards v. New Jersey Turnpike Authority*, sought declaratory relief for it to continue selling its "What Exit" wines with a logo resembling that of the green-and-yellow Garden State Parkway signs.

The winery case is set for a settlement conference on June 19 before U.S. Magistrate Judge Tonianne Bongiovanni.

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