



Jeff Geiger Counters

Unicorn Meat and Trademarks

June 25, 2010

By: [Jeff Geiger](#).

Here's the deal. You may own a trademark. A trademark is simply an adjective describing your good or service. Trademarks are designed to assist the consumer avoid confusion as to the source of the goods. For example, if I started a fast-food restaurant and called it MacDonalds (1980's reference to the movie "[Coming to America](#)" starring Eddie Murphy), it is likely that a certain franchisor would have a problem with the use of the mark, given the likelihood of confusion. So, what is a trademark holder supposed to do? If you do nothing and know about it, a defense can be raised that you acquiesced to the usage.

Most would suggest that you send a cease and desist letter to the wayward soul, requesting that they stop use of the mark, account for any profits, hand over their first-born child, etc. This is, in large measure, a legitimate request but you must be committed to take the next step and be prepared to file suit against the infringer, otherwise you may be seen as having waived the infringement.

On the other hand, a cease and desist letter can back fire. What you say can and will be used against you. This is all the more so given the nature of the Internet. A recent favorite is a spoof executed by the Think Geek Blog that referred to a new product: "Unicorn—the New White Meat." Before my PETA readers get concerned, there are no such things as unicorns absent narwhales and artificial circus freaks. Still, lawyers for the [National Pork Board](#) sent a [cease and desist letter](#) contending that the reference infringed on its mark "the other white meat." Really? Who doesn't like a good unicorn burger.

Of course, the cease and desist obtained national attention. As noted:

"It was never our attention to cause a national crisis and misguide American citizens regarding the differences between the pig and the unicorn" said Scott Kauffman, president and CEO of Geeknet. "In fact ThinkGeek's canned unicorn meat is sparkly, a bit red, and not approved by any governmental entity."

Thanks to the cease and desist you have now have heard of <http://www.thinkgeek.com/>. Point taken.

<http://www.jeffgeigercounters.com/>

[Richmond](#) • [Blacksburg](#) • [Fredericksburg](#) • [Research Triangle](#) • [McLean](#)

Copyright Sands Anderson Marks & Miller, PC.

THE INFORMATION CONTAINED IN OUR WEB SITE DESCRIBES LEGAL MATTERS HANDLED IN THE PAST BY OUR ATTORNEYS. OF COURSE, THE RESULTS WE HAVE ACHIEVED DEPEND UPON A VARIETY OF FACTORS UNIQUE TO EACH MATTER. BECAUSE EACH MATTER IS DIFFERENT, OUR PAST RESULTS CANNOT PREDICT OR GUARANTEE A SIMILAR RESULT IN THE FUTURE.