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Finnegan's monthly review of essential decisions, key developments, evolving trends in trademark law, and more.

## October 2010 Issue

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## **Civil Cases**

### ***Campbell Sales Group, Inc. v. Gramercy Park Design, LLC, Case No. 1:10cv55 (M.D.N.C. Oct. 6, 2010)***

*by Lawrence R. Robins*

#### **ABSTRACT**

In a case alleging infringement of the unregistered trade dress of four furniture models, the Middle District of North Carolina declined plaintiff's request for a preliminary injunction, finding the plaintiff had failed to demonstrate a likelihood of success in proving that the various designs had acquired secondary meaning.

#### **CASE SUMMARY**

##### **FACTS**

Plaintiff Campbell Sales Group, Inc. ("Campbell") is a leather-furniture wholesaler located in North Carolina. Among its products are four leather-furniture collections: the Aspen, the Hanover, the Jensen, and the Parker, all of which were created for Campbell's Leather Italia USA brand by Creation Furniture Co., Ltd., its Chinese manufacturer. The Aspen and Jensen models had been available for approximately six years, the Hanover for approximately five years, and the Parker for approximately three years. Defendant Gramercy Park Design, LLC ("Gramercy Park") is also a furniture wholesaler. The individual defendants are former Leather Italia USA sales representatives who now work for Gramercy Park.

Campbell maintained that Gramercy Park infringed the unregistered trade dress in each of the four leather-furniture collections by copying the total image and overall appearance of the sofa, love seat, and chair and ottoman versions from each line. In particular, Campbell claimed that Gramercy Park copied the "tier drop front facial arm panels and bustle back seating" of the Aspen line; the "scrolled arms, stitched seams in the back of the seats, and a slight camel back" in the Hanover line; the "scalloped front panel, faired front arm panels with inside welt trim and a reverse envelope arm" of the Jensen design; and the "bustle back seating, window pane stitching in the top back pillows, and a bow front appeal" in the Parker design. In response, Gramercy Park claimed that their designs were based on preexisting "Kasen" frames that were modified according to Gramercy Park's specifications.

##### **ANALYSIS**

To obtain preliminary injunctive relief, a plaintiff must show that, among other things, it is reasonably likely to succeed on the merits of its claim. To succeed in its claim of infringement of an unregistered product-

design trade dress, Campbell was required to show that its trade dress has acquired secondary meaning and that there is a likelihood that defendants' use of that trade dress will confuse the public. For unregistered trade dress, the plaintiff also bears the burden of proving that the trade dress is not functional. However, as Gramercy Park did not contend that the trade dress in question was functional, the court assumed that it was not for purposes of the pending motion.

Unlike many other circuits, the Fourth Circuit applies a presumption of secondary meaning in trade dress cases where the defendant intentionally copied the plaintiff's trade dress. Gramercy Park argued that the presumption should no longer apply in view of the Supreme Court's decision in *Wal-Mart v. Samara Bros.*, but the court disagreed, finding nothing in the *Wal-Mart* decision that expressly precluded such a presumption, and that at least one other district court in the Fourth Circuit had applied the presumption post-*Wal-Mart*.

In support of its claim of intentional copying, plaintiff pointed to (1) the similarities of the designs, (2) a Gramercy Park document showing its products with handwritten notes listing the corresponding Leather Italia USA product, (3) the fact that Gramercy Park sent pictures and samples of the Leather Italia USA models to its Chinese manufacturer, and (4) an email regarding those samples that it was shipping "for copying." Although Gramercy Park disputed the evidence, the court found it sufficient to give rise to a presumption of secondary meaning, particularly the email indicating that the samples had been shipped "for copying."

As the presumption applied, the burden of persuasion shifted to Gramercy Park to prove that the alleged trade dress had not acquired secondary meaning. In determining whether or not Gramercy Park succeeded, the court relied on the standard factors necessary to establish secondary meaning, namely, (1) advertising expenditures, (2) consumer studies linking the trade dress to its source, (3) sales figures, (4) unsolicited media coverage of the product, (5) attempts to plagiarize, and (6) the length and exclusivity of use of the trade dress.

Gramercy Park focused its defense on the last factor, length and exclusivity of use. As mentioned earlier, the various models had been on sale from three to six years. The court noted that, in the case of product design, it will usually take longer, if it is possible at all, to establish secondary meaning, and that doing so is particularly difficult when there are numerous competing products with similar designs and features. Thus, exclusivity of use becomes an important consideration.

Here, Gramercy Park succeeded in introducing substantial evidence of the use of similar designs by third parties. In two instances, the competing designs were sold by a company that previously manufactured Campbell's products. While Campbell argued that it was not required to pursue every infringer, the court found it significant that Campbell had not even pursued its own manufacturer for selling competing furniture designs that so closely resembled the Leather Italia USA designs.

The court next considered the sufficiency of Campbell's advertising and advertising expenditures, and found its evidence lacking. Campbell did not provide any advertisements for the four models at issue, the sole exception being a Costco ad in which Campbell's "Parker" collection was identified instead under the mark the "Richfield Leather Collection." The court found the fact that the product had been attributed in advertising to a different entity demonstrated that the trade dress was not exclusive to the Leather Italia USA name.

While Campbell offered evidence of substantial advertising expenditures, the court found the evidence insufficient for two reasons. First, adopting language from an older Sixth Circuit decision, the court proclaimed that advertising expenditures cannot be used to establish secondary meaning “when required merely to survive in a competitive market.” Instead, according to the court, only extensive advertising that results in consumer association with a single source will suffice. While Campbell broke down its advertising into various categories, it was unclear whether or not those categories included more Leather Italia USA models than those at issue in the case. Nor did Campbell prove that the expenditures were “more than what was necessary just to survive in the furniture industry.”

The court also discounted Campbell’s evidence of sales revenues for failure to include information as to how the figures compared to industry norms, how they compared to sales of other Leather Italia USA models, or even what portion of Leather Italia USA’s total sales those figures constituted.

Lastly, the court considered whether or not there was any likelihood of confusion, holding that, absent secondary meaning, a plaintiff cannot establish a likelihood of confusion. Highlighting the fact that Campbell had allowed Costco to sell the same products under a different name, the court held that Campbell undermined its own likelihood-of-confusion argument. The court also found the evidence of a significant number of other similar or nearly identical products compelling.

#### **CONCLUSION**

This case highlights the high evidentiary burden plaintiffs face when attempting to establish secondary meaning in a product-design trade dress. Of particular interest, the court found plaintiff’s evidence lacking based upon its failure to submit contextual information on industry standards for sales and advertising in tandem with its own figures.

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#### ***Fed. Treasury Enter. Sojuzplodoimport v. Spirits Int'l N.V., 2010 WL 3928910 (2d Cir. Oct. 8, 2010)***

*by Anna Balichina\**

#### **ABSTRACT**

The Court of Appeals for the Second Circuit held that a Russian government-owned entity may challenge the validity of the assignment of the incontestable STOLICHNAYA marks to defendants. The assignment was allegedly procured by a series of transactions tainted by fraud, and the court reasoned that the marks' incontestability did not shield them from a challenge to the assignment that allegedly granted defendants ownership. The court also found that the district court had federal jurisdiction to determine the validity of the assignment and ownership of the marks as part of plaintiff's claims brought under the Lanham Act.

#### **CASE SUMMARY**

#### **FACTS**

STOLICHNAYA, which means "from the capital" in Russian, is a well-known name that the Soviet government used to sell vodka worldwide before the collapse of the Soviet Union. In 1969, a Soviet government entity registered the mark STOLICHNAYA with the PTO. The registration for the mark became incontestable in 1974. In 1991, the same Soviet entity assigned the rights to the U.S. trademark and the right to import vodka to the United States under the STOLICHNAYA marks to PepsiCo. Under the agreement, the marks had to revert back to the Soviet government in 2001.

Shortly after the Soviet government signed the agreement with PepsiCo, the Soviet Union collapsed. In 2000, after a series of complicated transactions involving numerous entities, defendant Spirits International N.V. ("SPI") and related entities entered into an agreement with defendant Allied Domecq Spirits & Wines USA, Inc. ("AD") and related entities, in which SPI agreed to assign the marks (the rights to which it purported to trace back to the PepsiCo transaction) to AD beginning in 2001 until 2011, at which point the marks would revert back to SPI. AD then began marketing and selling STOLICHNAYA vodka in the United States.

Meanwhile, plaintiff Federal Treasury Enterprise Sojuzplodoimport ("FTE") is a Russian government-owned entity and claims to be the corporate descendant of the Soviet entity that had entered into the agreement with PepsiCo. FTE alleged in a fifteen-claim complaint that defendants SPI and AD usurped

the rights in the STOLICHNAYA marks, which were supposed to revert back to the now-Russian government in 2001, through a series of unlawful transactions, including assignment of the marks allegedly perpetuated by fraud.

In 2006, the Southern District of New York dismissed most of FTE's claims for failure to state a claim upon which relief may be granted. Specifically, the district court dismissed FTE's trademark infringement, dilution, false designation of origin, unfair competition, and misappropriation claims on the ground that they sought to challenge ownership of a mark that had become incontestable under the Lanham Act. After the district court threw out the bulk of FTE's claims, FTE voluntarily dismissed the remaining claim—unfair competition due to false advertising against AD—and appealed to the Second Circuit.

### **ANALYSIS**

The Second Circuit focused on the district court's reasons for dismissing FTE's claims, namely, that the STOLICHNAYA trademarks were incontestable. The appeals court recited the well-established rule that, subject to a limited number of defenses, an incontestable trademark provides evidence of the registrant's ownership of the mark and gives the registrant the "exclusive right to use the mark."

15 U.S.C. § 1115(b). Under 15 U.S.C. § 1127, the term "'registrant' embrace[s] the . . . assigns" of the registered mark, which the defendants in this case claimed to be.

The appellate court ruled that the district court erroneously permitted AD to "step into the shoes" of PepsiCo, the prior registrant of the marks, based on 15 U.S.C. § 1127. The court explained that while the term "registrant" indeed includes its "assigns" under the Act, the inquiry did not end there. The appellate court held that the district court should have inquired into whether a valid assignment had ever actually taken place "because only after a *valid* assignment of trademarks does the assignee succeed to the rights of the assignor. Obviously, an assignment obtained by fraud would not be valid."

The court emphasized that the recordation of an assignment with the PTO "is a ministerial act" and that the PTO "does not examine the substance of the transaction." The court concluded:

If the mere fact that the registrant satisfied the requirements for incontestability could preclude FTE's claim, then incontestability would transform recording – a ministerial act – into a mechanism for conclusively defeating allegations (which must be credited on a motion to dismiss) challenging the legality of the assignment.

Here, FTE alleged that AD was not the legitimate successor-in-interest to the incontestable marks because the transactions that led to the assignment were tainted by fraud. If FTE could prove that the incontestable marks were illegally assigned, then, the court concluded, the district court would be obligated to grant FTE appropriate relief.

Having concluded that the "validity of the assignment is antecedent to the question of contestability," the court considered whether FTE brought its suit in the right forum. AD claimed that the question of the validity of the purported assignment was a state-law claim and, therefore, FTE had no federal claim. While the court agreed that state law, and even possibly Russian law, may govern the validity of the assignment of the STOLICHNAYA trademarks from PepsiCo to AD, the Second Circuit found that a federal court may decide the issue of the ownership of a mark as part of a federal trademark infringement claim under the Lanham Act. The court noted that holding to the contrary would leave plaintiffs with two unappealing options: either engage in piecemeal litigation (a state court proceeding to decide ownership

followed by a federal Lanham Act lawsuit) or litigate all aspects of the case in a state court, thereby depriving litigants of the choice between state and federal courts that Congress offered litigants pursuing Lanham Act claims.

#### **CONCLUSION**

This case demonstrates that the assignment of an incontestable trademark is not “bulletproof” simply because the mark is incontestable. While incontestability is a powerful sword in any trademark dispute, it cannot shield a litigant who obtained ownership of the incontestable mark unlawfully.

*\*Anna Balichina is a Trademark Law Clerk with Finnegan*

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#### ***In re Chippendales USA, Inc.,*** **2010 WL 3894246 (Fed. Cir. Oct. 1, 2010)**

*by Linda K. McLeod and Stephanie H. Bald*

#### **ABSTRACT**

Applicant applied to register its trade dress consisting of wrist cuffs and a bowtie collar without a shirt for adult-entertainment services. The PTO determined that Applicant was entitled to registration only based on acquired distinctiveness. After Applicant filed a second application seeking registration based on inherent distinctiveness, the TTAB held that the Applicant's trade dress was not inherently distinctive based on, among other things, its common basic shape design, the fact that it is not unusual for exotic dancers to wear costumes that are revealing and provocative, and the fact that the trade dress was not unique in its field. The TTAB also held that the trade dress was a mere refinement of the earlier-used Playboy bunny costume. On appeal, the Federal Circuit faulted certain of the TTAB's findings related to the inherent distinctiveness of adult-entertainment costumes, but affirmed based primarily on the Playboy bunny-costume evidence.

#### **CASE SUMMARY**

#### **FACTS**

Chippendales USA, Inc. ("Applicant") applied to register its trade dress consisting of wrist cuffs and a bowtie collar without a shirt ("Cuffs & Collar") for adult-entertainment services. The PTO determined that Applicant was entitled to registration based only on acquired distinctiveness, and Applicant thereafter obtained a registration on that basis. Applicant subsequently filed a second application seeking registration for the Cuffs & Collar trade dress based on inherent distinctiveness. The PTO again refused registration and, on appeal, the TTAB held that the Cuffs & Collar trade dress was not inherently distinctive based on, among other things, its common basic shape design, the fact that it is not unusual for exotic dancers to wear costumes that are revealing and provocative, and the fact that the Cuffs & Collar mark was not unique in its field. The TTAB concluded, alternatively, that the Cuffs & Collar mark was not unique or unusual in the particular field of use because it was inspired by the ubiquitous Playboy bunny suit, which included cuffs, a collar and bowtie, a corset, and a set of bunny ears. Applicant appealed to the Federal Circuit.

#### **ANALYSIS**

The Federal Circuit first considered whether the fact that Applicant already owned a registration for the

Cuffs & Collar mark based on acquired distinctiveness mooted this proceeding. It found that it did not because, although registrations secured through inherent and acquired distinctiveness have equal standing on the Register, whether a particular mark is inherently distinctive may affect the scope of protection accorded in an infringement proceeding, which created a live controversy in this proceeding.

The Federal Circuit then explained that the four-part *Seabrook* test is the standard for determining the inherent distinctiveness of trade dress, namely, (1) whether it was a “common” basic shape or design, (2) whether it was [non]unique or unusual in the particular field, (3) whether it was “a mere refinement of a commonly adopted and well-known form of ornamentation for a particular class of goods viewed by the public as a dress or ornamentation for the goods,” or (4) whether it was capable of creating a commercial impression distinct from the accompanying words. Before applying the *Seabrook* test, the court agreed with the PTO that the proper time for measuring inherent distinctiveness is at the time of registration (not when the mark is first used). However, the court noted that the TTAB had erred by stating that “[t]heoretically, if a mark was inherently distinctive when applicant began use, it remained so thereafter.” The court explained that a term that was once inherently distinctive may lose its distinguishing characteristics over time.

Turning to the *Seabrook* test, the court held that the TTAB had appropriately considered evidence of the current situation as well as evidence of earlier uses. However, the court found that the TTAB erred in suggesting that *any* costume in the context of adult-entertainment would lack inherent distinctiveness. Specifically, the court found that just because the live adult entertainment industry generally involves “revealing and provocative” costumes does not mean that there cannot be any such costume that is inherently distinctive. Rather, each such trademark must be evaluated individually under *Seabrook*.

The court found that the TTAB did not err, however, in concluding that the Cuffs & Collar mark was not inherently distinctive under the *Seabrook* test. The court found that the first and fourth *Seabrook* factors were inapplicable, and that it did not need to consider whether the second *Seabrook* factor was applicable. Regarding the third *Seabrook* factor—whether the Cuffs & Collar mark was a mere variant or refinement of a particular costume—the court agreed with the TTAB that this test had been satisfied. Specifically, the court found that the use of the Playboy bunny mark (which includes cuffs and collar together with bunny ears) constituted substantial evidence supporting the TTAB’s determination that the Cuffs & Collar mark was not inherently distinctive because, among other things, it was widely used for almost twenty years before Applicant’s first use of its trade dress, the Cuffs & Collar trade dress was very similar to the Playboy bunny costume, and the mark was within the relevant field of use.

Applicant argued that it was unfair for the TTAB to raise the issue of the Playboy bunny costume sua sponte, preventing Applicant from having the opportunity to respond, but the court disagreed based on the fact that it was Applicant’s own expert who provided an article attached to his affidavit stating that the Cuffs & Collar was inspired by the bunny suit. Further, the court found that it could take judicial notice of trademark registrations covering the Playboy bunny, under Fed. R. Evid. 201(c), as it determined that the registration documents were “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”

Finally, the court rejected Applicant’s argument that *Seabrook* should be overruled because the Supreme Court’s decision in *Wal-Mart Stores, Inc. v. Samara Bros.* was fundamentally at odds with that decision. The court found that nothing in *Wal-Mart* questioned or undermined the *Seabrook* test, and the Supreme Court did not express any disagreement with *Seabrook*. Thus, the court was bound by *Seabrook* and

concluded that the TTAB's decision that the Cuffs & Collar trade dress was not inherently distinctive was supported by substantial evidence.

#### **CONCLUSION**

Costumes will not satisfy the *Seabrook* test for inherently distinctive trade dress where they constitute "a mere refinement of a commonly adopted and well-known form of ornamentation for a particular class of goods," such as the mere refinement on the Playboy bunny costume in this case. Also notable is the fact that it appears that it was evidence submitted by Applicant's own expert that may have led the court to its key finding, in support of which the court also relied on judicially noticed trademark registrations that were evidently not in the record.

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#### ***Stayart v. Yahoo! Inc.,* 2010 WL 3785147 (7th Cir. Sept. 30, 2010)**

*by David M. Kelly*

#### **ABSTRACT**

Plaintiff, an animal-rights activist, searched for her name on defendants' Internet search engines and discovered that her name was listed in search results linked to sexual-dysfunction drugs and pornographic websites. Plaintiff sued for false endorsement, but the district court granted defendants' motion to dismiss her complaint. Because plaintiff could not prove a commercial interest in her name, she did not have standing to sue under the Lanham Act. Even if she had standing, the district court held that there was no likelihood that consumers would believe that plaintiff endorsed the products and services at issue. Plaintiff appealed and the Court of Appeals for the Seventh Circuit affirmed the dismissal of the complaint based on lack of standing.

#### **CASE SUMMARY**

#### **FACTS**

Plaintiff Beverly Stayart used the Internet to promote her animal-rights activities and other interests. Stayart believed that she was the only "Beverly Stayart" or "Bev Stayart" on the Internet. Defendants Yahoo! Inc. and Overture Services, Inc. (collectively "Yahoo!") provide search engines at www.yahoo.com and www.altavista.com. Defendant Various, Inc. ("Various") operates online communities where members can exchange personal advertisements. Various's Adult Friend Finder online community provides adult-oriented social-networking services to over 20 million members.

Stayart performed Internet searches for her name on Yahoo!'s search engines and discovered that her name "Bev Stayart" was listed in search results linked to sexual-dysfunction drugs and pornographic websites. Stayart emailed Yahoo! and requested the removal of these search results. Yahoo! responded that it neither judges Internet content for appropriateness nor censors offensive materials, but rather simply presents information as it appears on the Internet. Stayart then found her name on an Adult Friend Finder web page advertising members near her place of residence in Wisconsin and featuring pornographic images of unidentified women. Stayart sued for false endorsement, alleging that defendants knowingly and intentionally used her name on the Internet without her authorization.

#### **ANALYSIS**

The district court granted defendants' motion to dismiss and denied Stayart's motions to replead and for sanctions. The court first held that Stayart did not have standing to pursue a Lanham Act claim because she did not state an intent to commercialize her identity. The court noted that the Lanham Act is focused on anticompetitive conduct in a commercial context, but Stayart neither engaged in any commercial marketing of her identity nor alleged any intent to do so in the future. Stayart's complaint was instead based on the distasteful association of her name with pornographic images, which is not a commercial injury. Her emotional desire to prevent others from using her name in ways she did not condone did not create Lanham Act standing.

The district court then examined the likelihood of confusion, assuming Stayart had commercialized her identity, and held that none existed. Stayart's complaint explicitly disavowed any association with pornographic materials, sexual-dysfunction drugs, or sexually oriented dating services. The court thus found that no one who accessed these links could reasonably conclude that Stayart endorsed the products or services at issue. Stayart's argument that Various was liable for initial-interest confusion also failed, because a person looking for information about Stayart would not associate her identity with a link to an adult-oriented dating website.

Finally, the district court held that Yahoo! was entitled to immunity under the Communications Decency Act ("CDA") because it acted as an interactive-computer service. Yahoo! could not be held liable for failing to remove the offending search results after Stayart complained, the court reasoned, because it did not create the objectionable content and did not exert any control over the third-party websites that did so. Yahoo! merely displayed the content in the context of search results. However, the court did not extend CDA immunity to Various. Various's Adult Friend Finder website displayed a banner ad featuring Stayart's name and offensive images, and the court held that it was unclear at the pleadings stage whether Various itself created the content or if it merely displayed content created by a third party. Finally, the court denied Stayart's motion to replead her complaint since her injuries could not be remedied by the Lanham Act.

On appeal, Stayart argued that she had standing under the Lanham Act because she had a commercial interest in her name. But the Seventh Circuit, in a brief opinion, affirmed the district court's dismissal of Stayart's case and its holding that Stayart had no such commercial interest. Stayart claimed that her name had commercial value because of her extensive animal-rights and genealogy activities on the Internet, but the appeals court disagreed. Under Section 43(a) of the Lanham Act, a person or entity has standing only if they have a "reasonable interest to protect" in a purely commercial activity. Although Stayart's activities were well intentioned, they were not commercial. According to the Seventh Circuit, Section 43 is a remedy available only to "a commercial plaintiff who meets the burden of proving that its commercial interests have been harmed by a competitor," and Stayart did not meet this requirement. Stayart argued that because her activities included advocacy and boycotts, she was engaged in "services" and "commercial activities" that gave her standing to pursue her claim. Stayart relied on a Second Circuit decision involving a nonprofit group, but that case was inapplicable here because it involved a claim for trademark infringement under Section 32 of the Lanham Act, which Stayart did not assert in this case. Moreover, Stayart could not assert a claim under Section 32 because she did not own a registered mark for her name.

## **CONCLUSION**

This decision illustrates the commercial aspects required for a party to bring a claim under Section 43(a) of the Lanham Act. Here, although plaintiff was a prolific activist, her activities did not give rise to a

commercial interest in her name.

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#### Happy Trails and Green Fairways on the Good Ship Lollipop

*by Robert D. Litowitz*

Shirley Temple, Roy Rogers, and Arnold Palmer. Each an icon in his or her own right. The child star whose curls and dimples charmed generations as she sang and tap-danced her way through heaps of heart-warming matinee fodder. The handsome King of the Singing Cowboys whose exploits with his trusty horse Trigger and faithful wife Dale Evans made him the idol of American youth. And Arnold Palmer, the swaggering golf legend whose charisma helped propel professional golf into the major leagues.

What could these radically different celebrities possibly have in common?

After his celebrated championship career, Palmer went on to become golf's most revered elder statesmen and a spokesperson for several products and companies. Rogers founded a chain of burger and roast beef fast-food joints, and had Trigger stuffed and mounted after he passed to the great prairie in the sky, while Temple, as Shirley Temple Black, became a diplomat. Not much common ground there.

But when you're out to dinner with the family, the connection is inescapable. The little girls ask for a "Shirley Temple"—the name given decades ago to an alcohol-free cocktail featuring ginger ale, grenadine, and a maraschino cherry suitable for juvenile imbibers. The boys want a "Roy Rogers" to spare themselves the embarrassment of ordering a drink named after their sisters' favorite child star. You, on the other hand, might order the ice tea/lemonade mixture universally known as an "Arnold Palmer," especially if you're the designated driver.

While the Shirley Temple and Roy Rogers drinks have been around for ages, the Arnold Palmer concoction is of more recent vintage. How did Arnold Palmer's name become associated with that relatively obvious concoction? To answer that burning question, I telephoned Arnold Palmer Enterprises. Reaching a recorded message, I dutifully followed the instruction to leave my name, number, and a detailed message. To my surprise, a few weeks later, someone returned my call. Not Arnie himself, but a ranking officer in his formidable corporate army. Intrigued and bemused by my investigative zeal, Arnie's spokesman explained that back in the day, after grueling rounds in the desert sun at the swanky Palm Springs Country Club, Palmer would indeed ask the bartender to serve up a tall glass of ice tea cut with lemonade. Arnie being the trendsetter that he was, other touring pros and patrons followed suit, and soon the combination became known simply as an Arnold Palmer.

I asked Palmer's representative whether it bothered Arnold and his camp that his name was being used indiscriminately and without his control all across the country. The answer was as gracious and humble as Arnie himself. While it's perhaps a source of some nuisance, how would it look if Arnold Palmer starting firing off cease-and-desist letters and lawsuits aimed at members of the public—HIS public—over a harmless soft drink? Instead of stirring up legal and PR trouble, and true to his classy image, Palmer opted to join and not fight the trend. He's licensed the good folks at Arizona Tea to market his own version of the "Arnold Palmer Tee." It comes in a container adorned with a variety of memorable pictures of Arnie across the various phases of his career, along with notes about his career highlights and records:



As Arnie showed during his illustrious playing days with his many "charges" up the leader board that thrilled the packed galleries known as "Arnie's Army," it's usually best to take matters into your own hands.

Other than the Shirley Temple, the Roy Rogers, and the Arnold Palmer, there don't appear to be other beverages that sport the name of a celeb. That said, if someone at a party offers you a Lindsay Lohan, it would probably be wise to stick to ice tea and lemonade.

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