

Court Doesn't Take the Bait in Land O'Lakes Trademark Case

What do fishing tackle and butter have in common? Nothing, so there is no trademark infringement by either for using the same Land O'Lakes mark.

In affirming the dismissal of competing trademark infringement claims, Seventh Circuit Judge Richard Posner said, "In this unusual case two firms sued each other though neither has been, is, or is likely to be harmed in the slightest by the other. The suit was rightly dismissed."

Land O'Lakes, Inc. has been using the Land O'Lakes mark since the 1920s for butter and other dairy products.

James Hugunin owns Land O' Lakes Outdoors, Inc. and Land O' Lakes Tackle Co., Inc. and has been making and selling fishing tackle since 1997. In 2000, he obtained a trademark registration for Land O' Lakes for fishing tackle.

Hugunin let the trademark lapse and then refiled for a new trademark, which Land O'Lakes, Inc. opposed at the U.S. Trademark Trial and Appeal Board. So Hugunin decided to sue Land O'Lakes, Inc. for trademark infringement. The dairy company counterclaimed arguing that the fishing tackle company was diluting the dairy's mark. After a bench trial, the court found there was no confusion to support Hugunin's claim, and the dairy company was barred by laches because it waited too long to assert any claim and, even if its claim were not barred, there was no dilution of its mark.

Judge Posner was "puzzled" why the dairy company worried about a fishing tackle company having the same trademark. "It would be strange indeed for a dairy company to manufacture a product so remote from milk, butter, and cream, and there is no sign that the dairy company intends to take the plunge," he wrote. "Equally puzzling, however, is why Hugunin and his companies are suing the dairy company for trademark infringement when there is nothing to suggest that the dairy company is thinking of making or selling fishing tackle."

"Many consumers would recognize the name 'LAND O LAKES' as referring to the dairy company, but we can't see how the company could be hurt by the use of the same name by a seller of just fishing tackle," Posner opined. Hugunin's business sales were less than \$30,000 in 2012 while Land O'Lakes' sales exceeded \$4 billion.

Trademarks are for specific goods and services, so when the services do not compete, similar marks are not "confusingly similar" unless the mark is a "famous" mark. Before Balough Law Offices files a trademark application, we search for marks in appropriate classes that may be confusingly similar.

James G. Hugunin, Land O' Lakes Outdoors, Inc. et al. v. Land O'Lakes, Inc., Seventh Cir. No. 15-2815, issued March 1, 2016.

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