

Your Grits Are on my List

By Reg P. Wydeven
March 22, 2015

I am a huge Hall and Oates fan. The first '45 I ever bought was 'Private Eyes' from Shopko for \$1.29. I would record all their hits songs onto a 90-minute cassette tape. On family trips, my sister would graciously listen to Daryl and John's unique fusion of rock and roll and rhythm and blues, which they dubbed 'rock and soul.' The pair is widely considered the most successful recording duo of all time and last year they were inducted into the Rock and Roll Hall of Fame.

Because I am such a huge fan, I would likely be interested in products Hall and Oates would endorse. That's why I was interested in 'Haulin' Oats' granola. Only the musical icons clearly did not put these grits on their list.

The duo sued Early Bird Foods, the Brooklyn-based granola company responsible for the line of granola products. Filed in New York, the complaint asserts that Daryl and John's own company, Whole Oats Enterprises, owns a federal trademark registration for 'Haulin' Oats.' In addition, the suit claims Early Bird is attempting to "trade off of the fame and notoriety associated with the artists."

Hall and Oates are seeking a permanent injunction against Early Bird, preventing the company from using the term 'Haulin' Oats.' Without the injunction, the suit asserts that the company's continued use of the name will confuse consumers and lead them to believe the granola is approved by the band. The rockers are also asking for compensatory damages, and all profits, gains and advantages derived by Early Bird out of its "Haulin' Oats" products.

Undaunted, after learning of the lawsuit, Early Bird founder Nekisia Davis tweeted that customers could get a 25% discount on Haulin' Oats by using the coupon code SAYITISNTSO, a reference to the group's 1983 hit.

Hall and Oates' company, Whole Oats Enterprises, was designed to protect the duo's image and likeness. But they're not the only musicians to do so. One such venture is Jerry Garcia Estate LLC. Founded in 2001 by Garcia's widow, children and brother, the company was created to protect and promote the legacy of the founder of The Grateful Dead. Garcia's family used the LLC to license his image and likeness to other companies, such as Ben and Jerry's, for their popular Cherry Garcia ice cream. My favorite is the Chia Pets' Chia Garcia, where the chia seeds grow into hair and a beard on Garcia's head.

Like Hall and Oates, Garcia's family is willing to head to court to stop unauthorized implied endorsements. In 2005 the family sued Moe's Southwest Grill for offering the 'Alfredo Garcia' fajita. While the name Garcia is pretty common, Moe's displayed a portrait of the singer with the words, "Trouble ahead, trouble behind, just have my taco ready in time," a twist on the lyrics to the Dead's "Casey Jones."

Like Hall and Oates, the Garcias alleged Moe's use of the portrait created "confusion among consumers" by wrongly suggesting "sponsorship or an implied endorsement of Moe's restaurants" by Garcia.

In 1978 I briefly considered suing the Standard Brands company for selling their 'Reggie' candy bar without my permission. However, the treat was actually named after Reggie Jackson and apparently no one confused six-year-old me with Mr. October.

This article originally appeared in the Appleton Post-Crescent newspaper and is reprinted with the permission of Gannett Co., Inc. © 2015 McCarty Law LLP. All rights reserved.