

Smuckers in a bit of a Legal Jam

By Reg P. Wydeven
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One of my fondest memories growing up was my dad's and my Saturday morning routine. We would get up early and watch cartoons while eating Cheerios. Then, my mom would make us toasted peanut butter and banana sandwiches and we would eat them while we watched old Tarzan reruns.

Because my mom truly loved us, she would use Skippy Crunchy peanut butter for my dad's sandwiches and Creamy Jif for mine. Every week my dad would remind me that peanut butter and banana sandwiches were Elvis Presley's favorite, except he liked his fried, not toasted.

At first I would complain that I didn't like the bread crusts, but my dad explained that the crust was an integral part of the sandwich because the crust was the part you held onto while you ate it. Without the crust, your fingers would get sticky with peanut butter.

Apparently I wasn't the only child in America that didn't particularly like the crust on my bread. Because I was part of such a large demographic that doesn't like bread crusts, J.M. Smucker company capitalized on this need in the marketplace by introducing "Uncrustables" sandwiches.

Modern science has put miracle foods on our kitchen table such as seedless watermelons, boneless chicken, yolk-less eggs, and now crust-less sandwiches. Uncrustables feature Smucker's famous jelly surrounded on both sides by peanut butter and a slice of bread. The crusts are then cut off and the edges of the bread are crimped together. The peanut butter encasement and the crimped edges of the bread provide a double layer of protection against jelly-oozing incidents.

Because cutting off the bread crusts and crimping the edges of the sandwich was such a capital idea, Smucker's actually patented the idea with the U.S. Trademark Office. The company sought the federal government's protection for its 'peanut butter shield' concept, which surrounds the jelly on both sides, preventing it from soaking into the bread, unlike a sandwich with peanut butter on just one side, which results in a soggy sandwich. Before Smucker's patent is extended, however, the government is now having second thoughts.

Cutting off bread crusts and crimping the sandwich edges together is maybe not a unique or original enough concept requiring government protection. Pampered Chef, the kitchen gizmo conglomerate, actually sells a bread-crimping device to use on your own 'made from scratch' peanut butter and jelly sandwiches.

Some legal experts claim that Uncrustables are not a novel enough idea to warrant government protection. Smucker's disagrees.

Smucker's has invested millions of dollars in the idea of Uncrustables, the technology needed to mass produce them, and finally market them. The last thing Smucker's wants is for their arch nemesis, Welch's, to release a similar crustless PB&J.

Smucker's now has to appear in federal court and convince a panel of federal judges that Uncrustables are an original and unique product and require federal patent protection.

If only Elvis would have patented his fried peanut butter and banana sandwiches. Just think of how many televisions he could have bought and then shot at with the money from all those royalties.

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