

Spoiled Brats

By Reg P. Wydeven
August 2, 2015

Nothing says summer like food on the grill. Our family loves grilled food – burgers, hot dogs, ribs and brats. One thing that never ceases to amaze me is the plethora of varieties of brats these days. Butcher shops are getting more and more creative.

Some of the delicious examples we love are chicken fajita brats from Cedar Creek Marketplace, which are filled with delicious peppers and cheese. We also love bacon cheeseburger brats from Haen Meats.

Our grill is on the deck off our kitchen, but in the winter it gets covered with snow. So this fall, I'll move it into our garage so we can cook out all year long. Just when I'll be ready to move the grill, it'll be time to pick up some Fall Harvest Apple brats from The Meat Block in Greenville. These delicacies are just one of many award-winning products made by my high school classmate, Phil Schmidt, who owns and operates The Meat Block.

I can't wait to grill the Fall Harvest Apple brats in my driveway this fall, but if I want to grill Johnsonville or Klement brats, I better hurry up and do it before I move the grill.

See, the brat juggernauts are duking it out in court to see who has the right to claim their product the "backyard" brat. In fact, they've made a federal case out of it.

Klement Sausage, Inc. filed the suit in federal court in its hometown of Milwaukee against Sheboygan's own Johnsonville Sausage LLC alleging their competitor infringed on their trademark. In January of 2008, Klement started promoting their products as the "Backyard Bratwurst," and they trademarked the phrase in 2009. The lawsuit alleges Johnsonville infringed on their intellectual property rights when they began calling their product the "Backyard Grilled Brat."

U.S. District Judge J.P. Stadtmueller will have to determine whether Klement is right in their accusation that Johnsonville's "improper use" of the trademark "has caused and will continue to cause confusion, mistake, or deception among the public." While Klement is not seeking specific monetary damages, the company is asking for an injunction preventing Johnsonville from using their trademarked phrase "Backyard Bratwurst" or anything that is "confusingly similar to it."

They may have a good argument. In February, the U.S. Patent and Trademark Office initially denied Johnsonville's application for a trademark on the phrase "Backyard Grilled Brat" claiming it is likely to be confused with Klement's trademark. However, Johnsonville will have the ability to respond to the initial ruling.

Klement points to Johnsonville's denied application in their complaint, stating "Despite this independent government assessment and despite Klement's demand to stop its infringing conduct, Johnsonville refuses to remove its confusingly similar trademark from the market, which it is using to sell identical goods: bratwurst sausages." The suit further claims that "Johnsonville's actions are in direct violation of federal and state law."

While I hate to see a company's rights being violated, I also hate to see two Wisconsin companies, both of whose products I love, fighting. It's the wurst.

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.