

A Lot at Steak

By Reg P. Wydeven
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This summer we got a gas grill at our office. On any given day, we can swing by the grocery store, pick up some patties and buns, and have a delicious cheeseburger for lunch. We have a nice patio out back where we can sit in the shade and chow down. Production suffers a little in the afternoon due to a full stomach, but it's a small price to pay for a killer lunch.

I love cheeseburgers. I don't care what they're called, I just love them. Bic Macs. Whoppers. Big Deluxes. They're all great.

While I may not care what you call my cheeseburger, restaurants take their burgers' monikers very seriously.

Take In-N-Out Burger, for example. The burger chain is famous on the West Coast for their elusive and expansive "secret" specialties. The restaurant's famed secret dishes outnumber the items on their actual menu.

Two such secret items are the "Animal Style" and "Flying Dutchman" burgers. Even though the burgers aren't on the menu, In-N-Out has trademarked their names. According to one of the franchise's attorneys, Joshua Glikin, In-N-Out's "secret menu is not so secret in the intellectual property arena."

A few years ago, Glikin, of the firm Bowie & Jensen, helped In-N-Out sue rival burger chain Grab-N-Go for trademark infringement. The suit alleged that Grab-N-Go used red, white, and yellow designs and typeface in their logo and menu board that were too similar to In-N-Out. In-N-Out also claimed that Grab-N-Go's "Wild Style Burger" was too similar to their "Animal Style" burger and used the same ingredients.

Finally, In-N-Out claimed the name Grab-N-Go is also too similar to its name, especially because both restaurants replace the word 'and' with the letter 'N.' In-N-Out asserted that these similarities would cause confusion and deception among consumers who might mistakenly believe the two restaurants are affiliated.

The two restaurant chains settled the suit out of court. The owners of Grab-N-Go changed their name to Georgia's and began serving Greek cuisine.

More recently, In-N-Out sued another rival, Smashburger, for trademark infringement. In this suit, In-N-Out alleges that Smashburger's Triple Double burger is too similar to their Double Double sandwich. According to court filings, Smashburger's use of the name "Triple Double" is "likely to confuse and mislead the consuming public, and injure In-N-Out, by causing consumers to believe incorrectly that Smashburger's products originate from or are authorized by In-N-Out."

In-N-Out's Double Double burger gets its name from its two cheese slices and two beef patties between sponge-dough buns. Smashburger's Triple Double has two burger patties, and three slices of cheese between toasted and buttered sponge-dough buns.

"Since at least as early as 1963, In-N-Out has continuously used its registered Double-Double trademark in connection with hamburger sandwiches in interstate commerce," the lawsuit asserts. It goes on to say that, "Since at least as early as 1966, In-N-Out has continuously used its registered Triple Triple trademark in connection with hamburger sandwiches in interstate commerce."

Under the Trademark Act of 1946, trademark infringement can result in actual damages, profits from the infringer's use of the trademark and court costs. Punitive damages, however, are not allowed. Therefore, it will be unlikely the court will grant In-N-Out's request for Triple Triple damages.

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