

IS THIS FISHING LURE MADE BY THE BUTTER COMPANY? SEVENTH CIRCUIT FINDS BUTTER AND FISHING TACKLE COMPANIES' USE OF THE SAME TRADEMARK IS NOT LIKELY TO CONFUSE CONSUMERS

By Andrew P. Holland and Jared M. Ahern

Is a consumer likely to be confused when a company that makes butter uses the same trademark as a company that makes fishing tackle (hooks, lines, sinkers, floats, rods, reels, baits, lures, spears, nets, gaffs, traps, waders and tackle boxes)?¹ The court's answer in *Huginin v. Land O' Lakes, Inc.* was a resounding no.² 815 F.3d 1064 (7th Cir. 2016).

James Huginin, along with two of his companies, sued the dairy company Land O' Lakes, Inc. for trademark infringement after it demanded that he cease using the "LAND O LAKES" mark without a license.³ Land O' Lakes counterclaimed for trademark dilution.⁴ The Seventh Circuit affirmed the district court's dismissal of all the claims, observing that "in this unusual case two firms sued each other though neither had been, is, or is likely to be harmed in the slightest by the other."⁵

Huginin's claim for trademark infringement was based on the theory that consumers would be deceived into thinking Land O' Lakes was the producer of his companies' fishing tackle.⁶ The court rejected this, finding that "the dairy company's use of the same trademark is confined to products so different from Huginin's that few if any consumers would think that simply by virtue of having an identical trademark the dairy company was competing with Huginin in a different industry."⁷

One wrinkle was that Land O' Lakes had advertised its dairy products in fishing magazines.⁸ Those advertisements often featured "Land O' Lakes Walleye Pro," a fisherman sponsored by the company.⁹ In finding that consumers would not be led to believe that Land O' Lakes had entered the fishing industry by these advertisements, the court drew the following analogy: "[J]ust as no one watching a NASCAR race and seeing a racing car emblazoned with Budweiser's

¹ *Wikipedia*, "Fishing tackle," https://en.wikipedia.org/wiki/Fishing_tackle (visited April 7, 2016).

² A claim for trademark infringement requires a plaintiff to prove it has a valid and protectable trademark and that the defendant's use of the protected mark is likely to cause confusion. *Applied Info. Scis. Corp. v. eBay, Inc.*, 511 F.3d 966, 969 (9th Cir. 2007). The court's analysis in *Huginin* was directed at the likely to cause confusion element.

³ *Huginin*, 815 F.3d at 1066.

⁴ *Id.*

⁵ *Id.* at 1068.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 1065.

⁹ *Id.* at 1068.

logo would think that the beer company had entered the automobile industry, so no one reading the ‘Walleye Pro’ ad or seeing a boat sponsored by the dairy company would think that the advertiser sells fishing tackle.”¹⁰

As for Land O’ Lakes’ dilution claim, the district court dismissed it because it found it waited too long to bring the claim (laches).¹¹ The Seventh Circuit opined that the dilution claim failed on the merits as well.¹²

As the court explained, generally there are two types of trademark dilution: 1) blurring and 2) tarnishment.¹³ Blurring is when a trademark becomes associated with different products, and a consumer has to “think harder” to recognize the trademark as identifying the product or company famously associated with it.¹⁴ Tarnishment is when a business of lesser repute (the court uses a “striptease joint” as an example) uses a famous mark, and in doing so tarnishes the image of the senior user of that famous mark.¹⁵ A claim for dilution does not require that there be any likely or actual consumer confusion.¹⁶

The court found that Land O’ Lakes’ mark was not being diluted in either fashion.¹⁷ The court found that there would be no blurring because the “products of the two companies are too different.”¹⁸ It found that there would be no tarnishment because “the sale of fishing tackle is not so humble a business as the sale of hot dogs by street vendors” (the court opined that a hot dog vendor using the name Tiffany could impair the cachet of the jewelry store, thus tarnishing its mark).¹⁹ Finally, the court noted that the term Land O’ Lakes was “derivative of Minnesota’s catchphrase ‘Land of 10,000 Lakes’” and that the company could therefore not “insist that it was the sole lawful user of the phrase in advertising for *all* products.”²⁰

The court’s analysis demonstrates that Land O’ Lakes’ objection to Hugunin’s use of the LAND O LAKES mark and Hugunin’s decision to file a lawsuit for trademark infringement were both miscalculations. This case provides an example of the limitations that trademark law imposes on trademark owners, as it shows how and where a trademark is used (even when the trademarks use the same words) are key factors in determining whether there are viable claims under the Lanham Act.

¹⁰ *Id.* at 1068.

¹¹ *Id.* at 1066.

¹² *Id.*

¹³ *Hugunin*, 815 F.3d at 1066; 15 U.S.C. § 1125(c)(1).

¹⁴ *Hugunin*, 815 F.3d at 1066.

¹⁵ *Id.* at 1067.

¹⁶ 15 U.S.C. § 1125(c)(1).

¹⁷ *Hugunin*, 815 F.3d at 1067. The court did not directly address whether LAND O LAKES was a “famous” mark, which is required to maintain a dilution claim. 15 U.S.C. § 1125(c)(1).

¹⁸ *Hugunin*, 815 F.3d at 1067.

¹⁹ *Id.*

²⁰ *Id.*