

A solid yellow right-angled triangle pointing towards the top-left corner.

## BLOGS

### Trademarks

# Florida Federal Court Dismisses Trademark Claims Due to Plaintiff's Incorrect Citations

In *Phelan Holdings, Inc. v. Wendy's International, Inc.*, 2012 U.S. Dist. LEXIS 101643 (M.D. Fla. July 3, 2012), the United States District Court for the Middle District of Florida dismissed three trademark-related claims because the plaintiff failed to cite properly to statutory causes of action. The dispute arose in connection with the alleged misuse of plaintiff's service mark "you can't fake fresh." (The plaintiff operates seafood restaurants under the mark "Pincher's Crab Shack.") The court granted leave for the plaintiff to amend its complaint, but specifically noted that the plaintiff could have avoided the issue with "[m]ore careful proofreading."

In response to the plaintiff's federal trademark infringement and trademark counterfeiting claims, the court noted that the Lanham Act provides causes of action under sections 1114 and 1125. Although its complaint made fleeting reference to these sections, the plaintiff cited provisions that set forth remedies only. The complaint likewise made its state law trademark infringement claim by erroneously citing to Florida's trademark *dilution* statute, rather than the infringement provisions. Because the plaintiff did not base its trademark claims upon the proper statutory causes of action, the court granted the motion to dismiss, but did give the plaintiff leave to amend.