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Trademarks

Pizza Franchisor's Trade Dress Infringement Claims Fail

A Michigan federal court recently denied a franchisor's motion for summary judgment on its trade dress infringement and unfair competition claims. *Happy's Pizza Franchise, LLC v. Papa's Pizza, Inc.*, 2013 U.S. Dist. LEXIS 10130 (E.D. Mich. Jan. 25, 2013), involved a lawsuit brought by Happy's Pizza Franchise, LLC, against Papa's Pizza, Inc. and Phil Almaki, who once was a passive investor in one Happy's Pizza location. Almaki later sold his interest in the Happy's Pizza store and opened several pizza restaurants under the mark Papa's Pizza. Happy's claimed that the Papa's Pizza restaurants copied its restaurant design and menu, in violation of the Lanham Act.

On Happy's motion for summary judgment on its trade dress and unfair competition claims, the court discussed the elements of trade dress infringement, distinctiveness, non-functionality, and customer confusion, and it rejected Happy's claim that its trade dress was inherently distinctive. Unlike the trade dress elements found to be inherently distinctive in other cases, such as a unique wine display system or a burnt orange and white color scheme with brick walls and a brown tile floor, Happy's granite countertops and tabletops, ceramic tiles and floors, back-lit pictures of menu items, and stainless steel shelving were found generic by the court and did not create an identifiable trade dress. Similarly, the menu offerings were not original and were labeled generically (e.g., "Perch and Shrimp Combo"). Accordingly, the court denied Happy's motion for partial summary judgment on its claim of trade dress infringement and unfair competition.

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