UNITED STATES: Pork Diluted by Salmon’s Claim to Be “The Other” Meat

The Trademark Trial and Appeal Board (TTAB) sustained the dilution claim made by the National Pork Board and the National Pork Producers Council (collectively, NPB) in opposing the application of Supreme Lobster and Seafood Company (SLSC) to register THE OTHER RED MEAT as a trademark for fresh and frozen salmon. National Pork Board & National Pork Producers Council v. Supreme Lobster & Seafood Co., Opposition No. 91166701 (T.T.A.B. June 11, 2010) (precedential). NPB owns several trademark registrations for THE OTHER WHITE MEAT as used with various goods and services, including association services promoting the interests of the pork industry.

In addressing the dilution claim under the Trademark Dilution Revision Act, 15 U.S.C. § 1125(c), the TTAB evaluated whether (1) NPB’s mark was famous, (2) NPB’s mark became famous prior to the filing date of SLSC’s application and (3) SLSC’s mark was likely to blur the distinctiveness of NPB’s mark. The TTAB found that NPB’s spending in excess of $550 million over more than 20 years to promote the mark THE OTHER WHITE MEAT, combined with surveys demonstrating a high degree of consumer recognition, proved the mark was famous. Pre-litigation surveys established that the mark became famous before SLSC’s application was filed.

The Board then considered the following Section 43(c) factors for determining a likelihood of dilution: (1) the similarity of the marks; (2) the degree of distinctiveness of the famous mark; (3) the extent to which the owner of the famous mark has engaged in substantially exclusive use of the mark; (4) the degree of recognition of the famous mark; (5) evidence that the owner of the challenged mark intended to create an association with the challenged mark; and (6) evidence of any actual association between the challenged mark and the famous mark.

The TTAB refused registration of SLSC’s mark, concluding that it was likely to dilute NPB’s mark. It declined to make a determination on NPB’s likelihood-of-confusion claim under Section 2(d).