

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

DENNIS PERRY

Plaintiff,

Versus

**H.J. HEINZ COMPANY BRANDS
LLC**

Defendant.

CIVIL ACTION NO. 19-280

JUDGE _____

MAGISTRATE _____

COMPLAINT

DENNIS PERRY (“Plaintiff”), through undersigned counsel, alleges the following in support of his Complaint against Defendant, H.J. HEINZ COMPANY BRANDS LLC (“Defendant”), for infringement and counterfeiting of Plaintiff’s federally registered “METCHUP” trademark.

NATURE OF THE CASE

1. This is an action for trademark infringement under the Lanham Act, 15 U.S.C. § 1051, *et seq.*, including the Trademark Counterfeiting Act of 1984, 15 U.S.C. § 1116(d), and related state law claims for trademark infringement and unfair competition due to Defendant’s unlawful manufacture, distribution, advertisement and/or sale of infringing goods and promotional materials bearing a confusingly similar trademark as to Plaintiff’s federally registered “METCHUP” trademark.

PARTIES

2. Plaintiff DENNIS PERRY is a Louisiana citizen of full age of majority residing in St. Tammany Parish, Louisiana.

3. Upon information and belief, Defendant H.J. HEINZ COMPANY BRANDS LLC is a Delaware limited liability company with its principal place of business at One PPG Place, Pittsburgh, PA 15222.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. § 1338(a) and (b). This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) with respect to the state law claims asserted herewith.

5. This Court has personal jurisdiction over Defendant because they are transacting business in this State and have caused harm or tortious injury in this State by acts within this State. Upon information and belief, Defendant is currently advertising, selling, and distributing infringing goods within the Eastern District of Louisiana.

6. Venue in this District is proper under 28 U.S.C. § 1391(b)-(d). A substantial part of the acts of infringement complained of herein occurs or has occurred in this District.

FACTUAL BACKGROUND

7. Plaintiff is an entrepreneur who has invested substantial time, money, and effort into creating and branding a mayonnaise and ketchup condiment sauce and a mayonnaise and mustard condiment sauce bearing the name “METCHUP.”

8. Since at least as early as August 15, 2010, Plaintiff has manufactured, bottled, and sold his “METCHUP” brand condiment sauces within the United States.

9. Plaintiff is the exclusive owner of the “METCHUP” trademark, federally registered with the United States Patent & Trademark Office bearing U.S. Reg. No. 392003 for use in connection with “ketchup; mayonnaise; mustard.”¹ Due to Plaintiff’s longstanding, continuous, and exclusive use of the “METCHUP” trademark, Plaintiff’s trademark registration is now incontestable pursuant to 15 U.S.C. § 1065.

10. Despite Plaintiff’s efforts to protect his trademark in his mayonnaise and ketchup condiment sauce, Defendant created and branded a competing mayonnaise and ketchup condiment sauce using a confusingly similar trademark.

11. Specifically, starting in or around April of 2018, Defendant launched a nation-wide ad campaign in which it heavily promoted its new mayonnaise and ketchup condiment sauce using the trademark “MAYOCHUP.”

12. Defendant’s “MAYOCHUP” mark is confusingly similar in sight, sound, and meaning when compared to Plaintiff’s “METCHUP” mark.

¹ Exhibit A, certificate of trademark registration.

13. Defendant's "MAYOCHUP" mark bears a particularly strong phonetic similarity to Plaintiff's mark. Depending on pronunciation and/or regional dialect, the marks are virtually indistinguishable from one another.

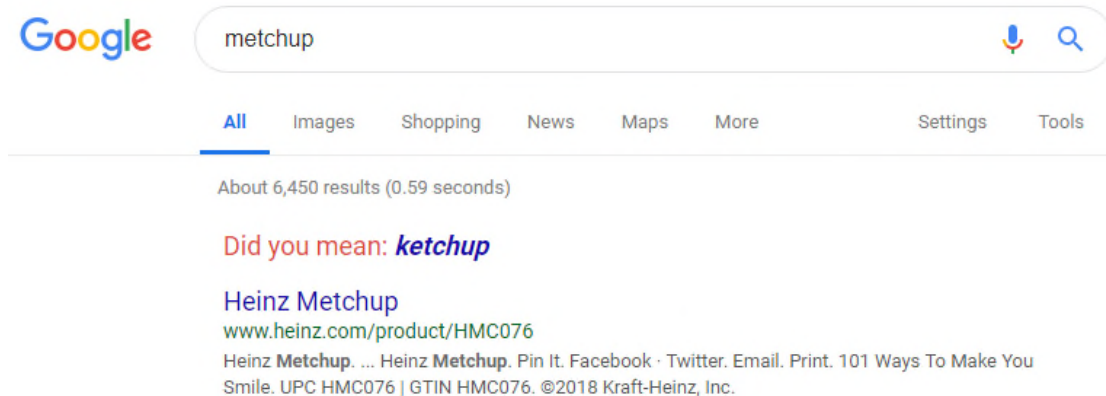
14. In fact, consumers on social media and news articles covering Defendant's infringing product have noted the auditory similarities, best summarized by the following posts on the social media platform, Twitter, including one in which Defendant responded:



15. Defendant has further advertised its infringing “MAYOCHUP” product using a counterfeit designation that is identical to Plaintiff’s “METCHUP” trademark. Specifically, in extensive social media advertising and on Defendant’s website, www.heinz.com, Defendant used Plaintiff’s federally registered “METCHUP” trademark in order to advertise its products:



16. Due to Defendant’s blatant infringement and misleading advertising practices, internet searches for Plaintiff’s federally registered “METCHUP” trademark instead direct consumers to Defendant’s “MAYOCHUP” products. As of January 14, 2019, half of all “METCHUP” search results returned on the first page of Google concern Defendant’s products. In fact, the first result on Google for Plaintiff’s “METCHUP” trademark directs consumers to Defendant’s website:



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