

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
AKRON DIVISION

The J. M. Smucker Company,

Plaintiff,

vs.

Hormel Foods Corporation,

Defendant.

CASE NO.: _____

**COMPLAINT FOR DECLARATORY
RELIEF, TORTIOUS INTERFERENCE,
AND UNFAIR COMPETITION**

Plaintiff, The J. M. Smucker Company (“Smucker”), by and through its attorneys, for its complaint against defendant Hormel Foods Corporation (“Hormel”) alleges as follows:

1. Plaintiff seeks declaratory relief under 28 U.S.C. §§2201-2202 and 15 U.S.C. §1125 and redress pursuant to Ohio common law for Hormel’s tortious efforts to derail Smucker’s nationwide launch of its new No Added Sugar variety of JIF peanut butter (“JIF No Added Sugar”) under the pretense that Smucker’s product, which uses a light blue lid and label, infringes Hormel’s unregistered trade dress rights to the color teal used in connection with peanut butter. No consumer would likely confuse clearly-labeled JIF peanut butter with clearly-labeled SKIPPY peanut butter and no reasonable litigant would claim infringement upon these facts.

Parties

2. Founded in 1897 and incorporated in 1921, Smucker is still a family-run Ohio corporation with its principal place of business at One Strawberry Lane, Orrville, Ohio 44667. Smucker's origins in and association with the state of Ohio are widely known.

3. Hormel is a Delaware corporation registered to do business in Ohio since 1936. Upon information and belief, Hormel maintains multiple regular places of business in Ohio, including the Hormel Foods Cincinnati Sales Office located at 4055 Executive Park Dr., Cincinnati, OH 45241, and its principal place of business is in Minnesota.

Jurisdiction and Venue

4. JIF No Added Sugar, including its packaging and plans for its nationwide launch, was conceived in Ohio and all marketing of the product emanates from there.

5. In multiple emails and letters to Smucker and its counsel in Ohio, Hormel purports to assert that its sales of SKIPPY creamy style peanut butter (including by necessity in Ohio) have given it unregistered trade dress rights to the color teal used on a container lid that preclude Smucker from its Ohio-based marketing and sale of JIF No Added Sugar.

6. Hormel has a history of pursuing trademark cases of questionable merit, having tried unsuccessfully to silence a Muppet ("Spa'am"), stop trademarks that included the term "spam" for spam filtering software and, more recently, asserted that consumers would be confused by the use of "black label" terminology on both bacon sold for human consumption and Beggin' dog treats.

7. Hormel's repetitive and escalating baseless threats and accusations have impacted and threaten to derail Smucker's nationwide launch of JIF No Added Sugar, damaging

Smucker's investment, market momentum, and goodwill in an amount to be determined at trial but in any event believed to exceed \$75,000.

8. Jurisdiction is proper in this Court because this litigation arises under federal law, namely 15 U.S.C. §1052 et seq. (Lanham Act). The Court has jurisdiction over this action under 28 U.S.C. §1331 (federal question), 28 U.S.C. §1332 (diversity), 28 U.S.C. §1338(a) (trademarks), and 28 U.S.C. §§2201-2202 (Declaratory Judgment Act). Supplemental jurisdiction over the state law claims also is proper in this Court pursuant to 28 U.S.C. §1367.

9. This Court has personal jurisdiction over Hormel because Hormel regularly does or solicits business, or engages in other persistent courses of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state; and the causes of action alleged herein arise from Hormel's property (unregistered trade dress rights) based in Ohio and its tortious interference with Smucker's nationwide launch of JIF No Added Sugar peanut butter, which it has purposefully directed at Smucker with the aim of causing tortious injury to and unfairly competing with Smucker in Ohio.

10. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and 1391(c) because, among other reasons, Hormel is subject to personal jurisdiction in this judicial district, Hormel and its agents have conducted or conduct Hormel's business in this judicial district, and/or because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

Smucker's JIF No Added Sugar

11. Smucker is a leading American food manufacturer. For more than 120 years, it has provided consumers with countless iconic brands, including JIF® peanut butter products –

which first debuted in 1956 and has been the #1 selling peanut butter brand in the United States for almost forty years.

12. Since 1968, JIF peanut butter has been sold in a jar with a label featuring three adjacent rectangles in red, blue, and green (the “JIF Color Banner”).

13. The JIF trademark is prominently displayed against the background of the JIF Color Banner in uniquely symmetrical, extra-wide letters. The JIF lettering has its own cult following of fans who have remarked on social media that the lettering allows the JIF trademark to appear similar even when viewed upside down.

14. Consumers are highly brand conscious when it comes to purchasing peanut butter. Numerous internet blogs and postings attempt to separate consumers into two camps based on their preference for #1 JIF or #2 SKIPPY.

15. Consumers who are health conscious, like the target consumers for JIF No Added Sugar, pay even closer attention to the products they are purchasing.

16. Like its competitors, Smucker uses different lid colors and background label colors to identify particular varieties of JIF peanut butter so that consumers know which variety they are reaching for, including red (creamy), blue (crunchy), and brown (natural). Other nut-butter products recently sold under the JIF trademark include cookies and cream and cheesecake flavored hazelnut spreads using white lids, almond butter using a reddish-brown lid, and chocolate-flavored nut products using purple packaging.

17. Also, like its competitor Hormel, Smucker embosses its plastic lids with the stylized design version of its word trademark, as shown below.



18. Upon information and belief, aside from some “natural” varieties of peanut butter, no other major peanut butter manufacturer offers a No Added Sugar variety. With the growing popularity of the “keto” diet and concern over the amount of sugar in the typical American diet, Smucker saw an opportunity to launch JIF No Added Sugar.

19. In choosing packaging that would differentiate JIF No Added Sugar from other JIF varieties, Smucker chose the color light blue, specifically Pantone Matching Scale (“PMS”) number 2925 C:



Color values:

RGB	0 156 222
HEX/HTML	009CDE
CMYK	75 18 0 0

See <https://www.pantone.com/color-finder/2925-C>

20. The primary considerations driving Smucker’s choice of PMS 2925 C were the existing consumer association between the color blue and sugar claims on food products, the desire to leverage a lid already utilized by Smucker’s peanut butter manufacturing facilities for a

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