

LEGAL UPDATES

Trademark Trial and Appeal Board Finds Fame, Sustains its First Dilution Claim in Years

This month, the Trademark Trial and Appeal Board ("TTAB") issued a favorable ruling of interest to famous brand owners. The TTAB sustained only its second opposition on grounds of dilution. It concluded that the National Pork Board's **THE OTHER WHITE MEAT** slogan qualified as a famous mark, and likely would be diluted by **THE OTHER RED MEAT** that had been adopted for use on "fresh and frozen salmon."

Most notably, the opinion suggests that the TTAB has warmed to the idea of relying on dilution to protect famous marks. In the past, the TTAB has taken a restrictive view regarding the kind of evidence that will suffice to prove fame and association in a dilution action at the TTAB.

In *National Pork Board v. Supreme Lobster and Seafood Co.*, Opposition No. 91166701 (June 11, 2010), the TTAB relied on survey evidence to sustain its findings of fame and likely dilution. First, the Pork Board introduced a series of yearly studies tracking consumer perceptions of **THE OTHER WHITE MEAT** conducted by independent research firms. In each of these tracking studies, 80-85% of respondents answered that they had read, seen, or heard pork referred to as "The Other White Meat." The National Pork Board argued, and the TTAB agreed, that these yearly tracking studies demonstrate high "public awareness" of the mark. The TTAB also considered an independent "consumer recognition" study demonstrating that nearly 80% of adults recognized **THE OTHER WHITE MEAT**.

The TTAB added that the Pork Board's robust advertising and marketing campaigns – including \$550 million in expenditures over two decades – support its finding that **THE OTHER WHITE MEAT** is a famous mark.

The Pork Board also introduced survey evidence to show that **THE OTHER RED MEAT** is likely to dilute its mark. The organization's dilution study showed that approximately 35% of respondents answered that an audio recording of "The Other Red Meat" called to mind the Pork Board's **THE OTHER WHITE MEAT** mark.

The TTAB's approach in this case is consistent with an increasingly receptive judicial attitude toward dilution claims. Because *National Pork Board* is a published opinion, it is useful precedent for brand owners in their efforts to keep the trademark register clear of registrations that are likely to blur or tarnish their famous marks.

This update was authored by Ryan Bricker. For more information, please contact your primary point of contact at Townsend or send your inquiry to info@townsend.com.

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