

## Cupcake Copycats

By Susan C. Azzarelli

Imitation is the sincerest form of flattery, just not in the cupcake business. The threat of imitators encroaching on business, and potentially creating confusion in the market place led one California based bakery to trademark their name, as well as their treat's distinctive dot.

Sprinkles Cupcakes is a Beverly Hills bakery, which opened in 2005, favored by many celebrities. The cupcakes have been seen on many television shows including "Oprah Winfrey Show", "Entourage" and "The Girls Next Door."

Last year, Sprinkles owners Charles and Candace Nelson trademarked the name Sprinkles Cupcakes, as well as their 'modern dot,' the concentric candy circles that adorn the top of each cupcake to indicate the flavor, to protect their handcrafted desserts from imitators. They also hired John Slafsky, a partner at Wilson Sonsini Goodrich & Rosati, who was familiar with food and restaurant IP litigation. They have filed three lawsuits in the last year, and also sent numerous takedown letters to companies using versions of their or who have similar names.

Doug Lictman, a UCLA law professor specializing in intellectual property, agreed in an interview with the L.A. Times that businesses need to be able "to protect the exclusivity of marks that genuinely identify the business." However, questions whether the company can lay claim to a commonly used in cake decorating and if the dot is actually distinct enough to set them apart, thus warranting legal protection.

"The law says that if you're a trademark owner you have a duty to enforce your rights," Slafsky stated in the L.A. Times interview. He explains the Nelson's are small business people who have worked hard to create a successful business and are frustrated with other copying their creations. Slafsky also stated in an interview with The American Lawyer that "[t]he most important asset to a company like this are its recipes and its brands," illustrating that imitators create confusion in the market place.

Sprinkles trademark enforcement has left the owners of other cupcake bakeries with a bitter taste in their mouths. Wendy Jones, who owns and operates Sprinkled Pink Cupcake Couture, received a letter from Sprinkles the day after she opened demanding that she change the name of her bakery. Jones bakery name had been registered since she got a business license in 2003, before Sprinkles was in existence.

"They're going too far," Jones said to the L.A. Times. "I'm sure they're protecting themselves, but they shouldn't be bullying or picking on little people like us."

Jones also believed that anyone who had been to the bakeries would not confuse them. Desiree Adl, company owner of Famous Cupcakes, who is also at the center of a Sprinkles suit also doesn't believe that there will be any market confusion. She stated that everyone would know the difference between her cupcakes and Sprinkles cupcakes, regardless of her use of a similar "modern dot" motif on her website and packaging.

Jones and Adl clearly believe that Sprinkles is distinct and could not be confused with their bakeries or products, however is it enough for legal protection or are trademarks being used to curb potential competition.

Sources:

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Sprinkles Cupcakes, <http://sprinklescupcakes.com> (last visited Sept. 15, 2008).