

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

)	
HORMEL FOODS, LLC, a Minnesota)	Civil No. _____
limited liability corporation, and)	
HORMEL FOODS CORPORATION, a)	
Delaware corporation,)	
)	COMPLAINT
)	
Plaintiff,)	
)	
vs.)	(Jury Trial Demanded)
)	
NESTLE PURINA PETCARE)	
COMPANY, a Missouri corporation,)	
)	
Defendant.)	

For their Complaint against defendant Nestle Purina Petcare Company (“Defendant”), plaintiffs Hormel Foods, LLC and Hormel Foods Corporation (collectively, “Hormel Foods”) state and allege as follows:

THE PARTIES

1. Plaintiff Hormel Foods Corporation is a Delaware corporation with its principal place of business in Austin, Minnesota. Hormel Foods Corporation is a multinational producer of high quality meat and food products, including BLACK LABEL-brand bacon.

2. Plaintiff Hormel Foods, LLC is a Minnesota limited liability corporation with its principal place of business in Austin, Minnesota. Hormel Foods, LLC is a subsidiary of Hormel Foods Corporation, and owns and licenses trademarks used by Hormel Foods Corporation.

3. Defendant is a Missouri corporation with its principal place of business in St. Louis, Missouri. Defendant produces and sells pet food.

JURISDICTION AND VENUE

4. This is an action for federal trademark infringement and false designation of origin under the provisions of the Lanham Act, 15 U.S.C. §§ 1051, *et seq.*, and for deceptive trade practices under Minnesota law, M.S.A. § 325D.44.

5. This Court has subject matter jurisdiction over Hormel's Lanham Act under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a), and has jurisdiction over the state law claim pursuant to 28 U.S.C. §§ 1338(b) and 1367.

6. This Court has *in personam* jurisdiction over Defendant for purposes of this action. The exercise of *in personam* jurisdiction comports with the laws of the State of Minnesota and the constitutional requirements of due process because Defendant advertises, offers for sale, and sells its products bearing the infringing trademark to Minnesota residents. In addition, on information and belief, Defendant engaged in its wrongful conduct intentionally, with knowledge that it would cause harm to Hormel Foods in Minnesota and, in fact, causing such harm.

7. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) because Defendant is subject to personal jurisdiction in this District and therefore resides in this District. Venue is also proper in this District under 28 U.S.C. § 1391(b)(2) in that a substantial part of the events giving rise to the claims occurred in this District.

GENERAL ALLEGATIONS

Hormel Foods and The BLACK LABEL Mark For Bacon

8. Hormel Foods is a bacon pioneer that has spent over 100 years perfecting the flavor of bacon. Hormel Foods was one of the first major brands to smoke bacon with cherrywood, pecanwood, and now-omnipresent applewood. Today, Hormel Foods puts out the only major bacon brand to use fresh, never frozen, pork bellies.

9. Since 1963, Hormel Foods has continuously offered bacon products under the trademark BLACK LABEL (the "BLACK LABEL Mark"). Hormel Foods's current offerings under the BLACK LABEL Mark include uncooked bacon, Canadian bacon, and microwave-ready and fully cooked bacon products. Hormel Foods offers its BLACK LABEL-brand products in both retail and foodservice channels of trade. Three such BLACK LABEL-brand products are depicted below:





10. Hormel Foods, LLC owns incontestable United States Trademark Registrations No. 1,018,473 (issued August 19, 1975) for BLACK LABEL for use in connection with bacon and No. 1,288,046 (issued July 31, 1974) for BLACK LABEL for use in connection with processed meats. Hormel Foods, LLC also owns United States Trademark Registration No. 4,507,714 (issued April 1, 2014) for sandwiches.

11. Hormel Foods, LLC licenses the BLACK LABEL Mark exclusively to Hormel Foods Corporation.

12. Hormel Foods has spent great sums of money and expended substantial effort to establish, protect, and promote the BLACK LABEL Mark.

Through continuous and extensive use and promotion of the BLACK LABEL Mark, and through the exercise of control over the quality of goods offered thereunder, the BLACK LABEL Mark has amassed substantial and valuable goodwill and consumer recognition, and consumers have come to closely associate the distinctive and valuable BLACK LABEL Mark with Hormel Foods's bacon and other goods.

13. Hormel Foods promotes its BLACK LABEL-brand bacon through, among other things, a website at www.blacklabelbacon.com, social media tweets under the Twitter handle @BlackLabelBacon, at a "BLACK LABEL Bacon" Facebook page that has over 550,000 followers, on Instagram at @blacklabelbacon and on Pinterst at @blacklabelbacon.

14. Hormel Foods has not authorized Defendant to use the BLACK LABEL Mark in any manner whatsoever.

Defendant and Its Unlawful Acts

15. In or about January 2017, Defendant launched a new line of bacon-shaped, "real meat" dog treats under the designation BLACK LABEL.

16. As depicted below, the packaging for Defendant's BLACK LABEL dog treats features large images of bacon-shaped treats and touts "REAL PORK" as the "NO. 1 INGREDIENT." The product packaging further emphasizes that the treats contain "2X MORE MEAT" under a red rendering of a pig, and picture a dog eyeing a platter of bacon-shaped treats under the words "GOTTA GET THAT PORK!"



17. Defendant has advertised its BLACK LABEL bacon-shaped dog treats on television, in print ads in *Food Network Magazine*, *People Magazine*, *Us Weekly Magazine*, and other publications, through social media, on the Internet, and elsewhere. The key message of Defendant's promotion of its BLACK LABEL bacon-shaped dog treats is that the "No. 1 Ingredient" is "real meat", namely, pork/bacon.

18. For instance, in a television commercial that, upon information and belief, has aired nationwide, a voiceover introduces Defendant's BLACK LABEL bacon treats and SKINNY STRIPS turkey-bacon treats as a having "real meat as ingredient one" followed by a dog proclaiming "Because Bacon!" Still images from this commercial, which features dogs enthusiastically sniffing and consuming a bacon product, are depicted below. The commercial is accessible online at www.youtube.com/watch?v=hT6oVZgAxxo.



19. Defendant also prominently features variations on the “Real Meat #1 Ingredient” emblem depicted above on a website dedicated to its dog treats (www.beggin.com) and in social media and other online advertising of its bacon-shaped dog treats:





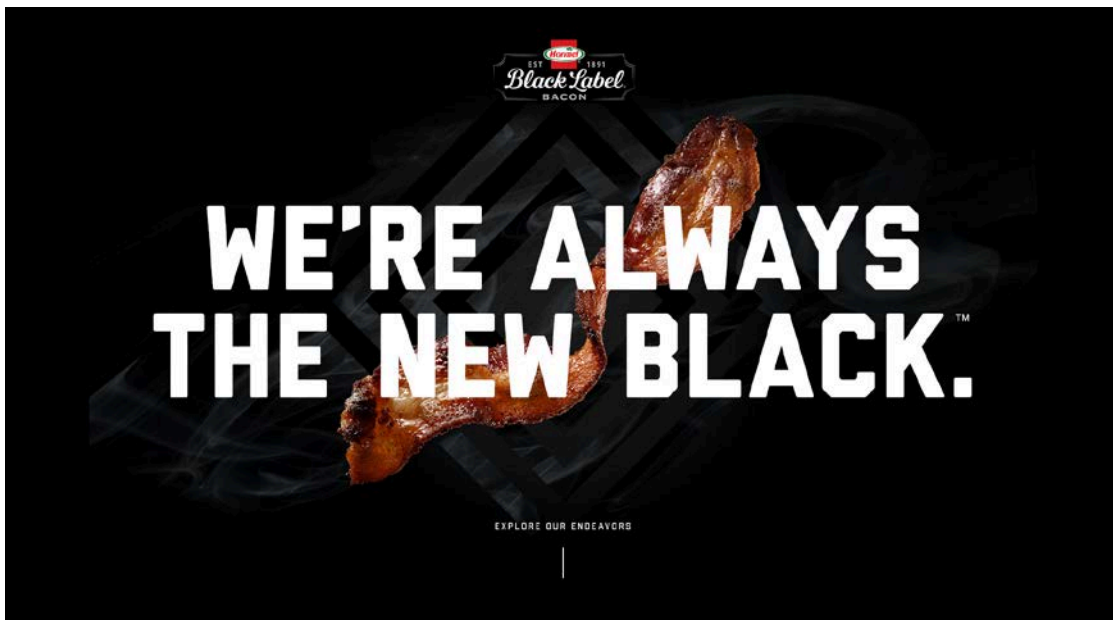
20. Upon information and belief, Defendant adopted the BLACK LABEL mark for use with its bacon-shaped, “real meat” dog treats with knowledge of Hormel Foods’s BLACK LABEL Mark and with an intent to trade on the goodwill in Hormel Foods’s BLACK LABEL Mark.

21. Indeed, in a commercial titled “Beggin’ Strips – Get That Bacon on the Meat Aisle” that is available on the “Purina Beggin’” channel on YouTube (www.youtube.com/watch?v=s_omD0Lpg2U), Defendant depicts a cartoon dog sniffing down a grocery bacon case, including shots of Hormel Foods’s BLACK LABEL-brand bacon:

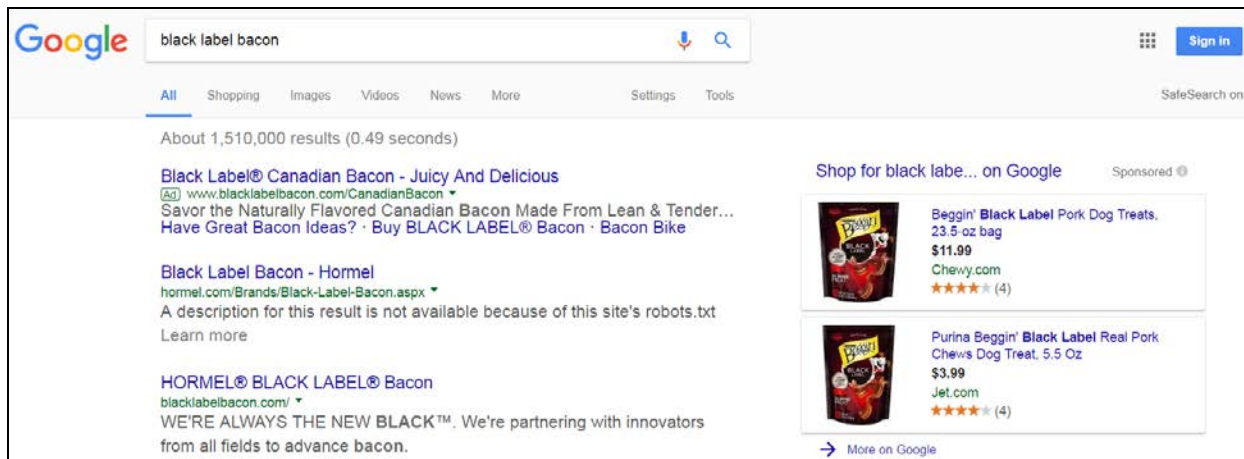


22. In addition to prominently featuring real bacon in their advertisements, Purina's "Black Label" product has the appearance of real bacon, which Purina prominently markets floating against a black backdrop in advertisements that are strikingly similar to a number of Hormel advertisements for its BLACK LABEL-brand products:





23. And, as a result of Defendant's keyword search advertising purchases, a Google search for "black label bacon" triggers sponsored online advertisements for Defendant's BLACK LABEL bacon-shaped dog treats, as depicted below:



24. Defendant's use of the designation BLACK LABEL in connection with its bacon-shaped, "real meat" dog treats is likely to cause confusion, mistake, or deception in the market as to the source, origin, sponsorship, or approval of Defendant's goods, and to falsely suggest that Defendant and/or its dog treats are connected to or associated or affiliated with Hormel Foods and/or its BLACK LABEL-brand bacon products.

25. Hormel Foods first informed Defendant of Hormel Foods's rights in the BLACK LABEL Mark by letter dated January 6, 2017. Notwithstanding this letter and follow up communications, Defendant has continued its wrongful use of the identical mark in connection with bacon-shaped, "real meat" dog treats.

26. By using BLACK LABEL in connection with its bacon-shaped, "real meat" dog treats without Hormel Foods's authorization, Defendant is causing consumer confusion, mistake or deception, and is willfully and intentionally trading upon the goodwill in the BLACK LABEL Mark that Hormel Foods has developed at its considerable expense and effort. Defendant thereby has caused and is causing Hormel Foods substantial and irreparable harm and injury.

27. Hormel Foods has no control over the quality of the goods Defendant provides under the designation BLACK LABEL. The invaluable goodwill represented in the BLACK LABEL Mark is thereby wrongfully at Defendant's mercy.

COUNT I
Infringement of a Registered Trademark
(15 U.S.C. § 1114)

28. Hormel Foods repeats and realleges the preceding paragraphs as if fully set forth herein.

29. Defendant has used and continues to use in interstate commerce the designation BLACK LABEL in connection with its bacon-shaped, “real meat” dog treats.

30. Defendant’s unauthorized use of the BLACK LABEL Mark as alleged herein constitutes trademark infringement in violation of 15 U.S.C. § 1114.

Defendant’s use of BLACK LABEL in connection with the advertisement, offer to sell and sale of its bacon-shaped, “real meat” dog treats is likely to cause confusion, or to cause mistake, or to deceive as to the origin, sponsorship or approval of the parties’ respective offerings, and/or as to the affiliation, connection or association between Defendant and/or its product and Hormel Foods and/or its products.

31. Defendant’s wrongful use of the BLACK LABEL Mark is knowing, deliberate, and willful.

32. As a direct and proximate result of Defendant’s actions described herein, Hormel Foods has suffered, and will continue to suffer, irreparable injury to its business, reputation, and goodwill, unless and until the Court enjoins Defendant’s actions. Hormel Foods has no adequate remedy at law.

33. As a direct and proximate result of Defendant's actions described herein, Hormel Foods has suffered, and will continue to suffer, monetary damages in an amount to be proven at trial.

COUNT II
False Designation of Origin
(15 U.S.C. § 1125(a))

34. Hormel Foods repeats and realleges the preceding paragraphs as if fully set forth herein.

35. Hormel Foods has used the BLACK LABEL Mark in connection with the sale of bacon since 1963. As a result of Hormel Foods's continuous and extensive use of the BLACK LABEL Mark in connection with bacon, the BLACK LABEL Mark has become widely known and Hormel Foods has become identified in the public mind as the origin of the quality bacon products offered under the BLACK LABEL Mark.

36. Defendant's unauthorized use of the BLACK LABEL Mark as alleged herein constitutes false designation of origin in violation of 15 U.S.C. § 1125(a). Defendant's use of BLACK LABEL in connection with the advertisement, offer to sell and sale of its bacon-shaped, "real meat" dog treats is likely to cause confusion, or to cause mistake, or to deceive as to the origin, sponsorship or approval of the parties' respective offerings, and/or as to the affiliation, connection or association between Defendant and/or its product and Hormel Foods and/or its products.

37. Defendant's wrongful use of the BLACK LABEL Mark is knowing, deliberate, and willful.

38. As a direct and proximate result of Defendant's actions described herein, Hormel Foods has suffered, and will continue to suffer, irreparable injury to its business, reputation, and goodwill, unless and until the Court enjoins Defendant's actions. Hormel Foods has no adequate remedy at law.

39. As a direct and proximate result of Defendant's actions described herein, Hormel Foods has suffered, and will continue to suffer, monetary damages in an amount to be proven at trial.

COUNT III
Deceptive Trade Practices
(M.S.A. § 325D.44)

40. Hormel Foods repeats and realleges the preceding paragraphs as if fully set forth herein.

41. Defendant's unauthorized use of the BLACK LABEL creates a likelihood of confusion or misunderstanding as to the source, sponsorship, approval, affiliation, connection, association with, or certification by, another, in violation of M.S.A. § 325D.44.

42. Upon information and belief, Defendant willfully engaged in the trade practice knowing it to be deceptive.

43. Defendant's unlawful conduct has caused and will continue to cause irreparable harm and other damages to Hormel Foods if such conduct is not enjoined.

44. As a result of Defendant's wrongful and knowing deceptive trade practices, Hormel Foods is entitled to an injunction, and to recover its costs and attorneys' fees, pursuant to M.S.A. § 325D.45.

PRAYER FOR RELIEF

WHEREFORE, Hormel Foods prays that this Court:

A. Preliminarily and permanently enjoin and restrain Defendant, its officers, agents, servants, employees and attorneys, and any other person in active concert or participation with them who receive actual notice of the Court's order, from using Hormel Foods' BLACK LABEL Mark, and any other mark or designation confusingly similar to the BLACK LABEL Mark, in connection with Defendant's dog treats;

B. Award Hormel Foods a monetary recovery consistent with 15 U.S.C. § 1117(a) in an amount to be proven at trial;

C. Enter judgment ordering Defendant to pay Hormel Foods its reasonable taxable costs and attorneys' fees in this action in a sum and manner deemed appropriate by this Court pursuant to 15 U.S.C. § 1117(a), M.S.A. § 325D.44 and/or other applicable law;

D. Enter judgment trebling all profits and damages owing to Hormel Foods due to Defendant's willful trademark infringement and false designation of origin pursuant to 15 U.S.C. § 1117(a); and

E. Grant Hormel Foods such other and further relief as the Court may find to be just and proper.

DEMAND FOR JURY TRIAL

Hormel Foods demands, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, a trial by jury on all claims to which a right to jury trial exists under law.

Dated: May 23, 2017

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