

Branding the Produce Aisle: Appealing to Consumer Tastes

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Brands are taking over the produce aisle at the grocery store. They have already conquered the cereal aisle, the soda aisle, the chips aisle, and the cookie aisle (my favorite). While there have always been produce brands (Chiquita® bananas or Dole pineapple), branded fruits and vegetables are proliferating. Newly branded fruits include the Elefante Green Gold pineapple, the Pink Elephant mango, and Cotton Candy grapes. The question is, why is there such a push to put stickers with a brand name on fruits and vegetables?

Product Recognition and Differentiation

From a legal point of view, product recognition and differentiation is the main reason to adopt a brand name. A brand name helps consumers identify a product, and helps that product stand out from other similar products. Which item are you more likely to remember—an apple or a Jazz apple? A banana or a Chiquita banana? It is possible for branding to be so successful that the brand name loses its ability to differentiate products. This is what happened to brands like aspirin and escalator, and it is something that brands like Xerox and Google fight against.

Avoiding consumer confusion—or making sure that a brand name differentiates one party's goods or services from another's—is the whole point of trademark law. If consumers can distinguish one party's brand from another's, then there is no trademark infringement. If consumers think that the brands are related or associated with each other, then there is infringement. This is why the infringement analysis generally looks beyond the marks being used and the goods or services they are used on to other factors, such as price point, where the goods or services are being sold, and whether there was an intent to confuse consumers.

Brand Loyalty

Strong, dependable brands can encourage brand loyalty (repeat business). If you buy Cotton Candy grapes and love the way they taste, you are more likely to purchase them again with the expectation that you will be able to experience that great taste again. A negative experience, though, can cause a consumer to search for another brand of product. Brand loyalty can be a powerful driver of business. Think about it. How many times have you gone to the store and purchased something because you (or someone you know) used it before and it worked well?

Sometimes brand loyalty is the result of an emotional connection to a brand. Perhaps you remember a brand from your childhood, or interacted with that brand when you were a child. Maybe you had a certain brand of drink with lunch in elementary school, or you remember your grandfather giving you a particular type of candy when you would visit. It could even be that you remember liking the advertising for a product when you were younger. This is one of the reasons why people often try to “revive” defunct brands, a practice that raises all sorts of questions about the ownership of the brand and the goodwill associated with it.

Branded Items Seem More Exclusive

The fashion industry has long since learned that branding can make a product seem more exclusive. One reason is that branded items can command a higher price. The store brand is almost always less expensive than the branded equivalent, whether in the grocery store or the department store.

In some cases, the fruits are considered luxury items. This can be because they are genetically engineered, like Del Monte's Pinkglow pineapple, which has white flesh, an edible core and low acidity, or the Cotton Candy grape, which is sweeter than a usual grape and tastes like cotton candy. In other cases, it is because small quantities are grown.

To protect the names of these new fruits, growers seek trademark protection. After spending years to develop the fruits themselves (intentionally bred varieties of fruit trees and nut trees can be protected by a plant patent in the U.S., and genes, traits, methods, and plant parts can be protected by a U.S. utility patent), there is little reason not to protect the brand name, especially since that is what customers will ask for at the grocery store.

Currently there are issued registrations or pending trademark applications for the following:

COTTON CANDY, for grapes (Reg. No. 4109691)

ELEFANTE GREEN GOLD, for pineapples (Reg. No. 7492189)

PINKGLOW, for pineapples (Reg. No. 6330579)

RUBYGLOW, for pineapples (Reg. No. 7507675)



CROWN MELON, for melons (Reg. No. 7154543)

Branding is Everywhere

It shouldn't really be much of a surprise that brands are coming to the produce aisle. Branded items have been coming home with us from stores for a long time, and various factors drive the success and longevity of a brand. Without protection, though, a brand's prospects for longevity are diminished and the brand is subject to appropriation or misuse by others. Trademark protection can help ensure the continued vitality of any brand, whether that brand appears on the most fashionable catwalks, in movie theaters, in a stadium, or in the grocery store.