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In the News

Intellectual Property Attorney Marc Misthal Comments on Trade Dress Protection for Food Presentation in Ongoing California Lawsuit

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Can the plating and presentation of a traditional Korean dish be considered protectable trade dress?

Offit Kurman intellectual property attorney Marc Misthal provided commentary to MLex® IP on a [federal court ruling](#) that a California restaurant successfully pled a trade dress infringement claim for the plating of its flagship dish, *galbi jjim*.

Sun Nong Dan Foods (SND) sued a former-employee-turned-competitor in the U.S. District Court for the Central District of California for copying the unique presentation of a popular Korean short rib dish. While the defendants moved to dismiss the case, the court is allowing SND's trade dress claim to proceed. Judge Wesley L. Hsu explained that when considered as a whole (as opposed to the individual comprising elements), the visual presentation of SND's galbi jjim dish could meet the requirements of protectable trade dress. The judge also noted that SND successfully pled that its distinctive plating has acquired secondary meaning thanks to evidence from media coverage and online reviews.

"Trade dress" refers to a product's overall visual appearance or packaging that makes it recognizable to consumers. Some famous examples of trade dress include the shape of a Coca-Cola® bottle, the iconic design of the classic Volkswagen® van/microbus, and the distinctive robin's-egg-blue boxes for jewelry from Tiffany & Co®. To be protectable, trade dress must be distinctive, non-functional, and likely to cause confusion if copied by a competitor.

Misthal, who regularly advises clients on protecting and registering their trade dress rights, commented that trade dress protection for food presentation is generally challenging but seems plausible in this case. He agreed with the judge that the unique plating configuration sounds like it could constitute trade dress. Misthal also said that the online evidence of actual consumer confusion was a particularly helpful fact to support SND's

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claim.

While SND's case for trade dress infringement can proceed, whether they will prevail on their claims remains to be seen.

You can read Misthal's full commentary in Melissa Ritti's article here:

<https://plus.lexis.com/newsstand/mlex/article/1592764> (subscription required)

Case citation: Sun Nong Dan Foods, Inc. v. Daeho Dining Group, Inc., 2:23-cv-09779 – CourtListener.com