

Unilever Faces Blowback in Mayonnaise False Ad War

By David Bario

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Has Unilever's lawsuit against condiment contender Just Mayo already backfired?

Unilever, the maker of Hellmann's and Best Foods mayonnaise brands, may eventually score a legal victory in the case, which claims Just Mayo dupes customers into believing its egg-free product is superior and is "real" mayonnaise. But so far the litigation has generated mainly mockery for Unilever, free PR for up-and-coming Just Mayo, and the promise of hefty legal bills on both sides.

On the mockery front, consider David Letterman's send-up of the lawsuit on Friday, in which the Late Show host poked fun at an imaginary law firm dedicated to mayonnaise litigation. ("It's hard to find a good mayonnaise attorney," quipped Letterman sidekick Paul Shaffer. In fact, both sides have top-shelf counsel, with Bruce Keller and David Bernstein of Debevoise & Plimpton representing Unilever and Joshua Schiller of Boies, Schiller & Flexner defending Just Mayo maker Hampton Creek Inc.)

More important for Unilever is the amount of media coverage the case has been attracting in general—coverage that's bound to be introducing American sandwich-eaters to Just Mayo and to Hampton Creek's cost-conscious, eco-friendly brand sensibility. Some may be persuaded by the notion that Just Mayo—with its egg-shaped logo—falsely implies that eggs are an ingredient or that the spread is indeed mayonnaise. Others may decide to pick up a jar or two in time for post-Thanksgiving leftovers.

After a surge of stories about the case last week (including ours), the media spotlight resumed over the weekend thanks to articles by The New York Times and the Associated Press. The outlets reported that Unilever altered product

details—and even customer comments—to add the word "dressing" to website descriptions of some of its offerings. The changes targeted products that, like Just Mayo, don't meet the government-sanctioned definition of "mayonnaise" highlighted in Unilever's complaint.

Hampton Creek counsel Schiller told us Monday that the apparent website alterations could undermine Unilever's case on the grounds that the company has "unclean hands." He said he was "astonished" when Hampton Creek CEO Josh Tetrick walked him through the changes over the weekend.

The case itself has barely gotten off the ground in federal court in Newark, where Unilever has moved for a preliminary injunction to halt Just Mayo's allegedly deceptive sales. After Boies Schiller complained that it needed more time for discovery, U.S. District Judge William Walls agreed Friday to postpone a hearing on the injunction until Dec. 17.

The Times also reported Saturday that Hampton Creek is preparing a countersuit against Unilever. Schiller declined to confirm that report, but he said the evidence that Unilever changed its website and user comments "could give rise to claims against the company, and we also think it's going to adversely impact their claims for an injunction."

Debevoise's Bernstein relayed this statement from Unilever: "Hampton Creek's citation to other matters is nothing more than an effort to distract from its own literally false advertising. Nothing changes in any way the undeniable fact that 'Just Mayo' is just not mayo, whether measured by dictionary definitions, consumer perceptions or FDA regulations. We remain confident that the court will agree."



Source: Court documents