



Jeff Geiger Counters

Food fights are fun. Celebrity food fights are even more fun.

Wednesday, April 28th, 2010 By: Jeff Geiger.

Missy Lapine wrote a cookbook “The Sneaky Chef: Simple Strategies for Hiding Healthy Foods in Kids’ Favorite Meals.” Four months after it was published, out came a book from Jessica Seinfeld, Jerry Seinfeld’s wife, “Deceptively Delicious: Simple Secrets to Get Your Kids Eating Good Food.” Apparently unable to stomach the competition, Lapine filed a civil action against Seinfeld, claiming copyright and trademark infringement.

Today, the U.S. Court of Appeals for the Second Circuit [affirmed a ruling](#) that Seinfeld did not violate Lapine’s intellectual property rights. With respect to the copyright claim, the court noted that Lapine asserted “that ‘the two works are substantially similar in their unique and innovative expression of the idea [of sneaking vegetables into children’s food] by means of a cookbook containing comprehensive instructions for making and storing a variety of vegetable purees in advance, and then using the purees in specially created recipes for children’s favorite foods.’” In a phrase that surely made a law clerk proud, the court responded that “Stockpiling vegetable purees for covert use in children’s food is an idea that cannot be copyrighted.” Further, the court concluded that the “look and feel” of the two cookbooks was different and the fact that they covered similar topics and included “vaguely similar titles” was not enough.

As for the trademark claims, Lapine claimed that the respective titles and book covers were likely to cause consumer confusion. She claimed there was confusion “between (1) [defendants’ title](#) and their realistic depictions of (a) a winking woman standing near carrots and holding a plate of brownies and (b) the same woman “shushing” in a head-and-shoulder cameo and (2) [plaintiffs’ title](#) and their stylized image of a female chef winking and “shushing” while concealing carrots behind her back.” Take a look at the covers, but I don’t see it. But don’t just take my word for it, the court didn’t buy it either, finding that the marks were dissimilar and that the use of the famous “Seinfeld” name would reduce any likelihood of confusion.

The court got it right and, in the end, it is likely that the publicity will sell even more books for both women. Now that’s justice—go eat your Brussels sprout brownies.

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