

## **Pepperidge Farm Sues Trader Joe's Over Cookie Configuration and Packaging**

(December 8, 2015) Maybe the Cookie Monster will need to decide this trademark case.

Pepperidge Farm, Inc. alleges in a recently-filed lawsuit that Trader Joe's Crispy Cookies infringes the Milano cookie configuration trademark. The suit claims the cookie's shape constitutes trademark infringement, trademark dilution, and unfair competition.

Pepperidge Farm has a registered mark for the Milano cookie's configuration of a filling sandwiched between two oval-shaped cookies. The complaint contends that Trader Joe's Crispy Cookies is a chocolate filling "sandwiched between two rounded rectangular cookies, mimicking an overall oval shape."

In addition, Pepperidge says it places its cookies inside a fluted paper tray in an upright package that features an image of the Milano cookie on the front panel. Pepperidge alleges that Trader Joe's package places an image of the Crispy Cookies "in a fluted paper tray" when in fact the cookies are "not actually sold in a fluted paper tray, but rather in a plastic tray."



"The similarity in configuration between the Milano cookies and the Infringing Product and the manner in which Trader Joe's has chosen to package and advertise the Infringing Product is likely to cause confusion, mistake, and/or deceive purchasers, potential purchasers, and the relevant public and trade at the time of purchase, as well as post purchase as to the source or sponsorship or approval" of Trader Joe's Crispy Cookies.

Pepperidge Farm has asked the court to enjoin Trader Joe's continued use, for damages, including treble damages, and attorneys' fees.

If you are a trademark owner, it is important to protect your mark. That includes monitoring to ensure that others do not infringe on your mark by creating confusion. Occasionally, a company has to file a lawsuit to stop alleged infringement, as Pepperidge Farms has done, although litigation should be a last resort. To protect your valuable trademark, you want to make sure that it is not merely descriptive, does not infringe on another's mark, and can be registered with the USPTO. Give us a call and we can help you get started.

*Pepperidge Farm, Inc. v. Trader Joe's Co.*, U.S. Dist. Court, Conn. No. 15 cv 01774, filed December 2, 2015.

*Balough Law Offices, LLC, is a Chicago-based law firm which focuses on trademark, cyberspace, internet, and business law. Our homepage is [balough.com](http://balough.com).*