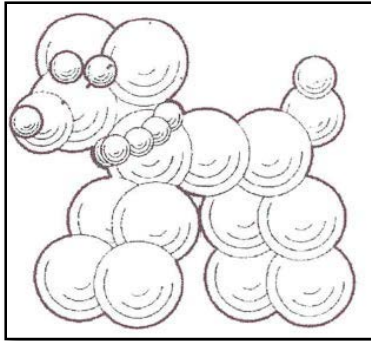


## **Fifth Circuit Should Know: Bead Dogs Can't be Trademarked**

You can't trademark Mardi Gras Bead Dogs for jewelry, pastries, and clothing because the phrase is merely descriptive of traditional Mardi Gras beads (used in New Orleans) which are shaped into dogs.

As a result, the Fifth Circuit affirmed a trial court's summary judgment finding the trademarks invalid. The Fifth Circuit should know what's descriptive at Mardi Gras because the court is located in New Orleans.



Haydel Enterprises, Inc., which operates a bakery in New Orleans, commissioned an artist to design a mascot named Mardi Gras Bead Dog. In 2009, Haydel filed and received trademarks for Mardi Gras Bead Dog and for the bead dog design for cake pastries, jewelry, and clothing, which it sold. In 2012, Nola Spice Designs began selling necklaces and earrings featuring a bead dog design. Haydel sent Nola a letter telling Nola to stop selling the jewelry. After receiving the letter, Nola filed for a declaratory

judgment that it did not infringe and also to cancel the trademarks. The trial court granted the declaratory judgment and cancelled the trademarks.

The term 'Mardi Gras bead dog' primarily refers for Mardi Gras celebrants "to a dog made of Mardi Gras beads," the court wrote. "Given the bead dog's popularity and its close connection to Mardi Gras, common sense indicates that other vendors would need to use the term 'Mardi Gras bead dog' to describe their own Mardi Gras-themed clothing, accessories, and baked goods containing the image of a bead dog," making the phrase descriptive and not trademarkable because Haydel could not show secondary meaning.

The design mark did not fare any better. "Given the similarity between Haydel's design mark and a traditional Mardi Gras bead dog, no reasonable juror could conclude that Haydel's mark is 'so unique, unusual or unexpected' when used in connection with Mardi Gras-themed merchandise that it would 'automatically be perceived by customers as being an indicator of origin,'" the appellate court said. "Haydel's design mark, like its word mark, is not inherently distinctive and may be protected only if it has acquired secondary meaning," which the court found it did not.

The trial court found, and the appellate court agreed, that as to a counterclaim by Haydel for copyright infringement, there was an "absence of substantial similarity between Haydel's and Nola Spice's bead dogs."

*Nola Spice Designs, L.L.C. v. Haydel Enterprises, Inc.*, 5<sup>th</sup> Cir. No. 13-30918, issued April 8, 2015.

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