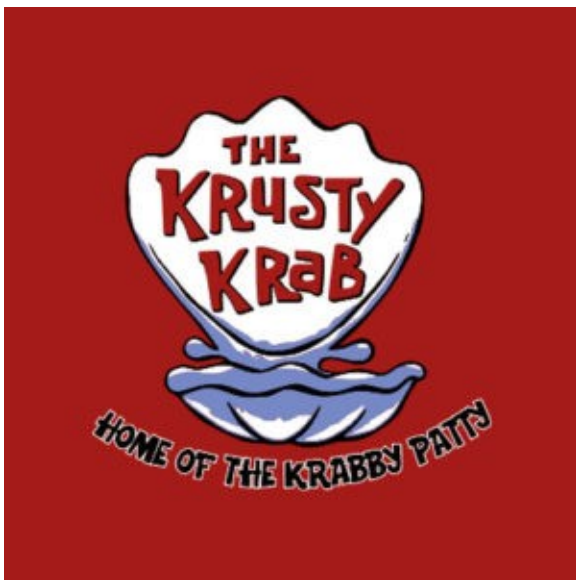


Another IP Lesson from Bikini Bottom: What "The Krusty Krab" Teaches Us About Trademark Protection for Fictional Places

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by J. Michael Keyes



In a [previous post](#) we discussed what SpongeBob SquarePants can teach us about trademark licensing. Now, more IP lessons are bubbling up from the fathoms below thanks to our absorbent, yellow and porous friend. This time, we learn about how fictional places—such as the famed underwater greasy spoon, “The Krusty Krab”—can be protected under the Lanham Act. Nautical nonsense, you say? Before you tell me to drop on the deck and flop like a fish, let me explain.

Viacom owns various copyrights and trademarks associated with “SpongeBob SquarePants,” the wildly popular animated TV series that airs on the Nickelodeon Network. In 1999, “The Krusty Krab” was introduced in one of the episodes as the fast food restaurant owned and operated by Mr. Krabs, the thrifty crustacean and slave driver employer of SpongeBob, who serves up Krabby Patty Burgers as the fry cook.

Fifteen years after The Krusty Krab made its splash into the watery, whimsical world of Bikini Bottom, a real company located here on dry land, IJR Capital Investments, LLC, [filed a service mark application](#) with the USPTO for “The Krusty Krab” for “restaurant services.” Viacom objected, IJR persisted, and the whole dispute landed in the U.S. District Court for the Southern District of Texas with Viacom suing for various claims including trademark infringement and dilution. Viacom moved for summary judgment, which the Court [granted](#) faster than you can ask, “Who lives in a pineapple under the sea?” How did Viacom best this real world imposter? In several ways.

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First, even though Viacom did not have a registration for “The Krusty Krab,” that did not sink its infringement claim. Far from it. The Court noted that “The ‘Krusty Krab’ backdrop is regularly featured in the television show and was also depicted in two *SpongeBob SquarePants* feature films released in 2004 and 2015, that had total gross receipts of over \$470 million.” Further, Viacom established rights in the name “through its sales and licensing of consumer products.”

Second, the Court observed that trademark protection extends to “specific ingredients of a successful T.V. series,” including such things as symbols, design elements, and characters that the public directly associates with the plaintiff or its products. The Court cited a previous case where the terms “Kryptonite” and the “Daily Planet” were imbued with trademark protection because they had been a “staple of the Superman character and story.” The *Viacom* Court had little trouble finding that The Krusty Krab was a protectable trademark, even though there had never been a single Krabby Patty served under that name in real life.

Third, the Court found The Krusty Krab had acquired secondary meaning given its long, storied history as part of the immensely popular TV series. Finally, there was little doubt consumers would likely be confused into believing that the real-world Krusty Krab was somehow affiliated with its fictional brother down in Bikini Bottom. In this regard, the Court was persuaded by the results of a nationwide survey showing that thirty percent of the respondents (restaurant goers) believed Viacom was the source of the Defendant’s restaurant.

So, the lesson from many leagues down under is that in certain scenarios fictional locations can be protected by the Lanham Act. The Krusty Krab is one such location given its longevity and popularity as an under the sea eatery in the iconic TV series *SpongeBob SquarePants*. The Court got it right. The faux Krusty Krab should now sleep with the crustaceans.