

Judge Rejects Greek Freak's Shot for Damages

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by Daniel Goldberger



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We previously [wrote](#) about a series of trademark lawsuits filed by NBA MVP and now NBA champion Giannis Antetokounmpo over the use of his nickname “Greek Freak”. Those lawsuits all contained similar allegations: that the defendants sold merchandise online bearing Antetokounmpo’s name, nickname and/or likeness, including Antetokounmpo’s trademarked GREEK FREAK.

While those cases all appear to have settled, one similar SDNY case that was filed after our prior blog post did not. In that case, *Antetokounmpo v. Paleo Productions LLC et al.* (No. 1:20-cv-6224), Antetokounmpo alleged that the defendants were selling their GREEK FREAK spice blend on the internet in violation of Antetokounmpo’s registered

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GREEK FREAK mark. After defendants failed to answer the complaint, Antetokounmpo obtained a default judgment and Judge Koeltl referred the case to Magistrate Judge Lehrburger for an inquest on damages. This is where things got interesting—at least for us trademark lawyers.

Antetokounmpo sought statutory damages, legal fees and costs, as well as a permanent injunction against the defendants. After receiving submissions from Antetokounmpo, the Magistrate Judge found the defendants liable for trademark infringement, awarded Antetokounmpo his legal fees and costs, and issued a permanent injunction against the defendants. However, the Magistrate Judge denied Antetokounmpo's request for statutory damages. Antetokounmpo appealed that ruling to Judge Koeltl, who reviewed the issues *de novo*.

Unfortunately for Antetokounmpo, Judge Koeltl agreed with the Magistrate Judge and denied Antetokounmpo's request for statutory damages. Under the Lanham Act, statutory damages are only available in cases "involving the use of a counterfeit mark." A counterfeit mark is, essentially, a mark that suggests a fake origin. After an exhaustive analysis, the court found that this was not a case that involved the use of a counterfeit mark for two independent reasons.

First, the court found it implausible that a reasonable consumer would think that the GREEK FREAK spice blend was from Antetokounmpo since he had never used his mark in connection with food, let alone spices. To qualify as a counterfeit, the mark must be used on the "same goods or services for which the trademark is registered." Because Antetokounmpo had not previously used his GREEK FREAK mark in connection with spices, the court ruled against him.

Second, the court found that the defendants had not even used GREEK FREAK as a "mark" under the Lanham Act because they did not use it to "communicate origin," but instead to describe a flavor (the company who made the spices was clearly identified on the label). On that basis, the court held that the defendants' use of GREEK FREAK "did not deceptively suggest an erroneous origin because it does not suggest an origin at all."

While Antetokounmpo's winning streak continues both in court and on the court, his victory in the *Paleo* case was not a complete slam dunk.