

Take a Bite Out of This: Smuckers is Claiming Exclusive Rights to its Version of the Peanut Butter and Jelly Sandwich

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We all have childhood memories of it: the sweet tang of fruit jelly mixed with the salty crunch of rich peanut butter, sandwiched between two pieces of soft sliced bread. Maybe you preferred it with the crusts on, cut along the diagonal, or with no crusts at all, cut into four square servings. Or maybe you enjoyed a circular, crimped version packaged in plastic wrap and tucked conveniently in our lunch box. In whichever preparation you favor the classic PB&J sandwich, various forms of it are, and have been, a lunchtime staple of schoolkids for generations.

I, myself, am a child of the '90s, and vividly remember my peers enjoying a particular version of a thawed, disc-shaped, crustless PB&J in the school cafeteria. These sandwiches—produced by J.M. Smuckers Company (“Smuckers”) and branded under the UNCRUSTABLES trademark—were first launched into the U.S. market in 1996 and

have maintained their popularity ever since.

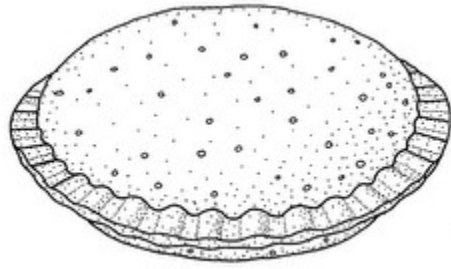
In the last two decades, Smuckers has invested billions of dollars to develop and grow the goodwill and branding associated with these peculiarly shaped sandwiches. Not only does Smuckers own a number of federal U.S. trademark registrations for the UNCRUSTABLES name and stylized logo covering sandwiches and other related food goods, but it also claims rights in the distinctive style and design of the product itself.

According to Smuckers, it has source identifying trademark rights in and to “the design of a round crustless sandwich, inclusive of the configuration in a round pie-like shape with distinct peripheral undulated crimping,” as well as packaging picture representations of “a round crustless sandwich in whole and with a bite taken out of it showing filling on the inside” of the sandwich. In short, Smuckers claims exclusive rights in the trade dress of its UNCRUSTABLE sandwiches.

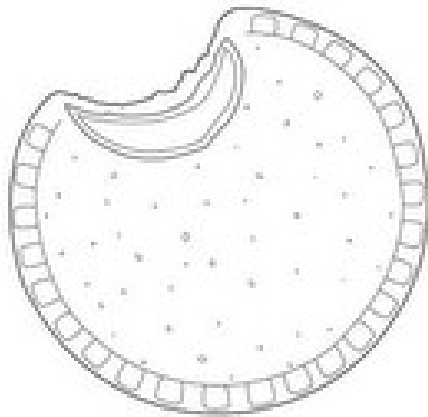
“Trade dress” constitutes a form of trademark right wherein a “symbol or device” serves a source identifying function—consumers view this symbol or device and associate it with the source of the corresponding goods, and not just the goods themselves. See Trademark Manual of Examining Procedure, Section 1202.02 (citing 15 U.S.C. § 1052). Originally, trade dress protection only protected the packaging or dressing of a product (the most famous example for which being the Coca-Cola bottle), but in recent years, such protection has expanded to encompass the design of the product itself, as well as its color or flavor. See *id.* The product design is defined as the “total image and overall appearance” of the product, as measured by a totality of its elements, including its features like size, shape, color, texture, or corresponding graphics. See *id.* (citing *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 764 n.1, 23 USPQ2d 1081, 1082 n.1 (1992)).

But protecting trade dress as trademark rights is tricky and represents a high bar because the claimed trade dress must be both non-functional (e.g., not essential to the use or purpose of the article) and distinctive. And making this protection more difficult to garner, in its 2000 decision in *Wal-Mart Stores v. Samara Bros.*, the U.S. Supreme Court held that, by default, product design is *not* inherently distinctive, and therefore, requires secondary meaning in order to garner any form of trademark rights and a federal trademark registration. Proving that trade dress has acquired the sufficient secondary meaning to become distinctive is no small feat. Under Section 2(f) of the Lanham Act, 15 U.S.C. § 1052(f), secondary meaning is established through substantially exclusive and continuous use of the trade dress as a trademark by the owner in commerce for at least five years. In practice, the owner of the product design must prove that, by virtue of its exclusive, continuous use of the product design in the market, consumers have come to recognize that particular product design as a source identifier of the goods, and not just a design of the goods themselves.

And Smuckers did just that with its UNCRUSTABLE sandwich product design. In 2002, Smuckers successfully registered with the U.S. Patent and Trademark Office (“USPTO”) the trade dress for its sandwich, the product design for which is seen below (see U.S. Reg. No. 2623577):



It also owns, among many others, U.S. Reg. No. 5,941,408 for a 2-D depiction of its UNCRUSTABLE sandwich with a bite out of it, seen below, that Smuckers says it uses in many forms as a pictorial representation on the UNCRUSTABLE product packaging:



Given Smuckers' substantial investment in the intellectual property of its UNCRUSTABLES-branded product, particularly its trade dress, it has a vested interest in protecting the exclusivity of that product design as a brand, and not just as a food preparation style.

And it has done just that. On October 13, 2025, in the Northern District of Ohio, Smuckers filed a lawsuit against Trader Joe's Company ("Trader Joe's") regarding Trader Joe's own sale of a "crustless, peanut butter & strawberry jam sandwich" product. See Case No. 5:25-cv-02181. According to Smuckers' complaint, Trader Joe's product is a "round, crustless sandwich with a crimped edge that [Trader Joe's] is marketing with a bite taken out of it on the packaging that mimics" Smuckers' UNCRUSTABLE products. The subject Trader Joe's product is shown below:



Notably, Trader Joe's is not using the UNCRUSTABLE trademark, or any brand confusingly similar to the same, and thus, Smuckers' claims are focused only on the product design of Trader Joe's sandwiches. In addition to claims of federal and common law trademark infringement and others, Smuckers' complaint claims its UNCRUSTABLE trade dress is famous, and Trader Joe's use of a similar product design is diluting the strength of Smuckers' rights. The fame of its trade dress is yet another high bar Smuckers will have to prove in order to succeed in its claims against Trader Joe's.

There is no question that Smuckers has spent a tremendous amount of time and money in protecting this trade dress. But if this case moves forward, Smuckers will face a test it did not have to at the USPTO. During the prosecution and examination of its trade dress application—importantly, an *ex parte* proceeding—Smuckers submitted promotional materials, sales volume, advertising expenditures, and media mentions to support its claim that the UNCRUSTABLES trade dress had acquired the requisite secondary meaning. The USPTO accepted this evidence and granted Smuckers its sought-after registration.

But now Smuckers must prove consumers are likely to be *confused* by Trader Joe's version of the crimped PB&J. This might be a challenge. After all, at the point-of-sale, consumers will see the Trader Joe's sandwiches covered in Trader Joe's wrapping, all within the context of a purchasing environment where Trader Joe's branded products are ubiquitous. Perhaps Smuckers will have to consider a post-sale theory of confusion where students and lunchroom attendants are queried as to whether they believe Trader Joe's sandwiches are really UNCRUSTABLES. Smuckers may have spent billions in protecting its trade dress, but whether that money has translated into consumer perception such that confusion is likely has yet to be seen, and may soon be put to the test.

