Howard & Mills, P.C.

Memo

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| --- | --- |
| To: | Lisa Howard |
| From: | Amanda Montes |
|  |  |
| Date: | July 13, 2019 |
| Re: | Trademark issue – Sweet Lorraine’s Bakery, LLC (File no. 3176) |

Dear Attorney Howard,

I have previously assisted you with the incorporation of Sweet Lorraine’s Bakery, LLC. Recently the owner, Christine Donnelly, received an e-mail from Greg Sawyer of Detroit, Michigan. Mr. Sawyer, along with his wife, operate Sweet Lorraine’s Café and Bar in Detroit and has accused our client of trademark infringement. They have a trademark on the phrase “Sweet Lorraine’s” for all restaurants, catering, and bakery services in the United States. I have compiled a research plan for the client to review before we proceed. This will help us discover if there is any merit to Mr. Sawyer’s accusations and what actions may need to be taken to avoid litigation.

The legal issue in this case is if our client caused a trademark infringement by naming her store Sweet Lorraine’s Bakery, LLC when a couple in Michigan claimed to have a trademark on the phrase “Sweet Lorraine’s”. One of the first things I will need to research will be the trademark laws in Michigan since that is where the couple resides, that will be the jurisdiction where any court proceedings will take place. I’ve included a link to some information on Michigan’s trademark laws, there is also some contact information for departments connected with the trademark laws.

 <https://www.michigan.gov/documents/lara/8306_528115_7.pdf>

Factual vocabulary that I anticipate using in my research include, but aren’t limited to; Michigan, licensed trademark, trademark infringement, common words, secondary meaning, exclusive rights, authorization, breach, violation, likelihood of confusion, brand, registered, and registered trademark.

 Legal vocabulary that I anticipate using include, but aren’t limited to; burden of proof, Trademark Act, and Act 242, P.A. 1969,

Primary sources of law

1. [Janet Travis, Inc. v. Preka Holdings, L.L.C., 306 Mich. App. 266, 856 N.W.2d 206, 2014 Mich. App. LEXIS 1432, 2014 WL 3759323](https://advance.lexis.com/api/document/collection/cases/id/5CT8-H4S1-F04G-Y0KW-00000-00?cite=306%20Mich.%20App.%20266&context=1000516)
2. [Golden v. Lim, 2016 U.S. Dist. LEXIS 15915, 2016 WL 520302](https://advance.lexis.com/api/document/collection/cases/id/5J29-BY41-F04D-H37C-00000-00?cite=2016%20U.S.%20Dist.%20LEXIS%2015915&context=1000516)
3. 15 U.S. Code § 1127
4. 15 U.S. Code § 1114
5. 15 U.S. Code § 1125(a)

Secondary sources of law

1. About Trademark Infringement USPTO: <https://www.uspto.gov/page/about-trademark-infrigement>
2. Law Encyclopedia
3. Business Names and Trademarks Lambert Law <https://www.lambertplc.com/articles/general-corporate-and-business/business-names-and-trademarks/>

I estimate it will take me 12-15 hours to thoroughly conduct the proper research for this case. I believe that my research plan has covered every area that we need to get factual information on in order to see where our case stands. There is a lot of different cases that I can research to find precedence in cases such as this one. Any legal question our client may have can be answered upon the completion of my research. Once I have conducted my research it will help with our client’s decision on whether to change the name of her store or to risk litigation. I understand that a name change cannot be taken lightly as our client has money invested in her business with the name she has been using. If you have any questions about my research plan, please contact me.

Regards,

Amanda Montes B00548316

Howard & Mills, P.C.

Memo

|  |  |
| --- | --- |
| To: | Lisa Howard |
| From: | Amanda Montes |
|  |  |
| Date: | July 27, 2019 |
| Re: | Sweet Lorraine’s Bakery, LLC |

Our client, Sweet Lorraine’s Bakery, LLC, has been threatened with litigation from a man named Greg Sawyer, who claims he has a trademark on the phrase “Sweet Lorraine’s” for all restaurants, catering and baking services in the United States. Our client has invested a lot of time and money into her business. I have done some research into certain cases that may help our client from losing her business or being forced to change the name of a business that she has invested so much into.

I have conducted extensive research according to the research plan I had drawn up for our client’s approval. I found a couple of Sixth Circuit cases that apply, along with a Supreme Court case and a case from the Court of Appeals of the State of Michigan. I am hopeful that we are able to help our client and save her from losing money and resources spent building her business. I have included the briefings of the cases I’ve found, along with some information about the Lanham Act that is pertinent to our client’s case.

**Lanham Act**

## [15 USCS § 1125](https://advance.lexis.com/api/document/collection/statutes-legislation/id/8S9D-W4W2-8T6X-7177-00000-00?cite=15%20USCS%20%C2%A7%201125&context=1000516)  False designations of origin, false descriptions, and dilution forbidden

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person’s goods, services, or commercial activities,

(C) Dilution by blurring; dilution by tarnishment.

(1) Injunctive relief. Subject to the principles of equity, the owner of a famous mark that is distinctive, inherently or through acquired distinctiveness, shall be entitled to an injunction against another person who, at any time after the owner’s mark has become famous, commences use of a mark or trade name in commerce that is likely to cause dilution by blurring or dilution by tarnishment of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.

**United States Supreme Court Case**

 [KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc., 543 U.S. 111](https://advance.lexis.com/api/document/collection/cases/id/4F01-5RN0-004B-Y014-00000-00?cite=543%20U.S.%20111&context=1000516)

FACTS:

Both KP Permanent Make-Up and Lasting Impressions I, Inc are competitive make-up companies. Both companies use the term “microcolor” in their descriptions of their make-up. Lasting Impression I, Inc has a trademark on the words “micro colors”.

ISSUE:

Is the burden of proof the responsibility of KP Permanent Make-up to show the unlikelihood of consumer confusion?

RULE:

Before infringement can be shown, a trademark holder must demonstrate that it owns a valid mark, and thus a protectable interest. Once the trademark holder shows that it has a protectable interest, the holder must show that the alleged infringer's use of the mark is likely to cause confusion, or to cause mistake, or to deceive. [15 U.S.C.S. § 1114(1)(a)](https://advance.lexis.com/document/?pdmfid=1000516&crid=f111cbfe-e3cb-4e5c-96e7-267e6403b633&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4G6M-HX60-0038-X0Y9-00000-00&pddocid=urn%3AcontentItem%3A4G6M-HX60-0038-X0Y9-00000-00&pdcontentcomponentid=6393&pdshepid=urn%3AcontentItem%3A7XWN-PGD1-2NSD-N03W-00000-00&pdteaserkey=sr3&pditab=allpods&ecomp=5pkLk&earg=sr3&prid=d6b48daf-5fa2-45b5-a389-5e565a19e4b9) & [(b)](https://advance.lexis.com/document/?pdmfid=1000516&crid=f111cbfe-e3cb-4e5c-96e7-267e6403b633&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4G6M-HX60-0038-X0Y9-00000-00&pddocid=urn%3AcontentItem%3A4G6M-HX60-0038-X0Y9-00000-00&pdcontentcomponentid=6393&pdshepid=urn%3AcontentItem%3A7XWN-PGD1-2NSD-N03W-00000-00&pdteaserkey=sr3&pditab=allpods&ecomp=5pkLk&earg=sr3&prid=d6b48daf-5fa2-45b5-a389-5e565a19e4b9).

ANALYSIS:

The seller, KP Permanent Make-up (KP). contended that it used the term "microcolor" continuously well before the competitor, Lasting Impression I, Inc (Lasting) registered its trademark and that its continued use of the term to describe its products constituted a fair use. Lasting argued that, in order to show fair use, KP was required to show that its use of the term was unlikely to cause consumer confusion. The United States Supreme Court held that KP had no independent burden to negate the likelihood of any confusion in raising the affirmative defense that the term "microcolor" was used descriptively, not as a mark, fairly, and in good faith. Since Lasting claimed infringement, Lasting was required to prove the likelihood of consumer confusion, but the lack of such confusion was not an element of the statutory fair use defense. Further, while the likelihood of confusion was one consideration in determining whether KP's use was fair, a finding of some degree of likely confusion by itself did not preclude the fair use defense.

CONCLUSION:

The judgment requiring the seller to show unlikelihood of consumer confusion to support its fair use defense was reversed, and the case was remanded for further proceedings

**Sixth Circuit Court Cases**

[Hensley Mfg. v. ProPride, Inc., 622 F. Supp. 2d 554](https://advance.lexis.com/api/document/collection/cases/id/4T52-WJC0-TX4N-G0KJ-00000-00?cite=622%20F.%20Supp.%202d%20554&context=1000516)

FACTS:

Hensley Mfg. and ProPride, Inc both sell trailer hitches. The inventor of ProPride used to work at Hensley Mfg. and while employed at Hensley, invented a trailer hitch. Hensley then registered a trademark for the inventor’s name and sold those trailer hitches using the inventor’s name. After the inventor split from Hensley and started working at ProPride they invented a new trailer hitch and licensed the new design to the competitor.

ISSUES:

Did ProPride infringe on the trademark of Hensley Mfg. by registering a trailer hitch using the inventor’s name?

RULES:

To state a claim for trademark infringement under the Lanham Act, a plaintiff must allege facts establishing that: (1) it owns the registered trademark; (2) the defendant used the mark in commerce; and (3) the use was likely to cause confusion. [15 U.S.C.S. § 1114(1)](https://advance.lexis.com/document/documentlink/?pdmfid=1000516&crid=7b7b5e2f-a63c-4505-8ea9-9568c7e1fe1e&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4X54-86K0-TXFX-82SY-00000-00&pdcontentcomponentid=6390&pddoctitle=Hensley+Mfg.+v.+ProPride%2C+Inc.%2C+2009+U.S.+App.+LEXIS+19797+(6th+Cir.)+(6th+Cir.+Mich.%2C+2009)&pdproductcontenttypeid=urn%3Apct%3A30&pdiskwicview=false&ecomp=b539k&prid=d9debd4f-681b-4a3c-9927-512c16550fed).

ANALYSIS:

Hensley Mfg. alleged that it purchased the trailer hitch business of the inventor as a going concern. Hensley Mfg. registered a trademark for the inventor's name and sold trailer hitches using his name. The inventor split with Hensley Mfg., designed a new trailer hitch, and licensed the new design to the competitor. The complaint referred to attached examples of ProPride's advertisements. The appellate court determined that the trademark infringement claims failed because (1) the advertisements did not create a likelihood of consumer confusion regarding the source of ProPride's products since, inter alia, they identified the inventor as the designer of the new hitch, stated that he was no longer affiliated with Hensley Mfg., and clearly identify ProPride as the seller, and (2) the affirmative defense of fair use applied to bar the trademark infringement claims since the complaint and attached exhibits showed that ProPride's uses of the inventor's name were descriptive. Hensley Mfg.'s procedural arguments regarding dismissal were rejected.

CONCLUSION:

The appellate court affirmed the district court's dismissal of the complaint.

[Chrysler Group LLC v. Moda Group LLC, 796 F. Supp. 2d 866](https://advance.lexis.com/api/document/collection/cases/id/536H-MJ61-F04D-H2F4-00000-00?cite=796%20F.%20Supp.%202d%20866&context=1000516)

FACTS:

Plaintiff, Chrysler Group, primarily manufactures automobiles, but also sells products online. Chrysler’s automobiles are produced, manufactured, and assembled outside of Detroit. Defendant, Pure Detroit, is a family owned business that specializes in selling products that promote and/or are made in Detroit. After a hike in popularity in sales from a SuperBowl ad Chrysler started selling t-shirts with “Imported From Detroit”, or IFD, and Pure Detroit also starting making shirts with the IFD phrase. Pure Detroit’s shirts do not have the Chrysler name or Chrysler logo on the shirt. Pure Detroit’s have its own signature stamp of the Spirit of Detroit on the back.

ISSUES:

Did Moda Group infringe on Chrysler Group’s trademark by using the term “imported from Detroit” in their advertisement and on their products?

RULES:

[15 USCS § 1125](https://advance.lexis.com/api/document/collection/statutes-legislation/id/8S9D-W4W2-8T6X-7177-00000-00?cite=15%20USCS%20%C2%A7%201125&context=1000516)

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person’s goods, services, or commercial activities.

ANALYSIS:

Plaintiff has not shown that it has a protectable trademark. Plaintiff has not shown that IFD phrase is inherently distinctive. Nor has it shown that it has acquired distinctiveness through a second meaning. Only trademarks that are “distinctive” as a matter of law are protectable. Plaintiff’s failure to show a strong likelihood of success on the merits is fatal to its request for a preliminary injunction. For the reasons discussed above, and the court being fully advised on the premises, it is ordered that the plaintiffs motion for preliminary injunction is denied.

**District Court of Appeals State of Michigan**

[Leelanau Wine Cellars v. Black & Red, 502 F.3d 504](https://advance.lexis.com/api/document/collection/cases/id/4PPP-SDC0-TXFX-83CG-00000-00?cite=502%20F.3d%20504&context=1000516)

FACTS:

Both parties owned and operated wineries located on Michigan's Leelanau Peninsula. Leelanau Wine Cellars asserted that Black & Red's use of the word "Leelanau" in its registered name of "Chateau de Leelanau Vineyard and Winery" infringed on Leelanau Wine Cellar's registered "Leelanau Cellars" trademark. Although the parties did not contest the district court's determination that Leelanau Wine Cellar's mark was geographically descriptive, they disputed whether Leelanau Wine Cellar's mark possessed secondary meaning entitling it to trademark protection.

ISSUES:

Marks that are descriptive are not inherently distinctive but may enjoy the benefit of protection if they develop a secondary meaning, did Leelanau Wine Cellar’s mark possess the secondary meaning required to entitle it to trademark protection?

RULES:

[15 USCS § 1125](https://advance.lexis.com/api/document/collection/statutes-legislation/id/8S9D-W4W2-8T6X-7177-00000-00?cite=15%20USCS%20%C2%A7%201125&context=1000516) (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person.

ANALYSIS:

The court found that the district court failed to assess the evidence in the record to determine whether the presumption of secondary meaning had been rebutted because it erroneously determined that Leelanau Wine Cellar was not entitled to the benefit of a statutory presumption of validity as it did not register the word "Leelanau" alone. Although the court found strong evidence in the record tending to undermine Leelanau Wine Cellar's claim of secondary meaning, it ultimately declined to resolve the issue because the district court properly found that Leelanau Wine Cellar failed to demonstrate a likelihood of confusion created by Red & Black's use of the mark, which was dispositive of all of Leelanau Wine Cellar's claims.

CONCLUSION:

The Court of Appeals for the Sixth Circuit affirmed the judgement by the District Court for the Western District of Michigan that was entered in favor of the defendant, Red & Black, in that Leelanau Wine Cellar did not prove the likelihood of confusion.

I hope this research has provided you with the information needed to prepare a strong case for our client. If there is any additional information, I can find for you or if you have any questions please contact me via email at any time.

Amanda Montes B00548316

Howard & Mills, P.C.

Memo

|  |  |
| --- | --- |
| To: | Lisa Howard |
| From: | Amanda Montes |
| cc: | Supervising Attorneys |
| Date: | August 4, 2019 |
| Re: | Trademark Issue - Sweet Lorraine’s Bakery (File No. 3176) |

Our client, Sweet Lorraine’s Bakery, has been threatened with litigation by Greg Sawyer, who claims he has a trademark on the phrase “Sweet Lorraine’s” for all restaurants, catering, and baking services in the United States. Our firm has been hard at work trying to find ways to help save our client from being forced to change the name of her business, that she has invested a lot of time and resources.

**Statement of Facts**

Sweet Lorraine’s Bakery, LLC (“SLB”) is a family owned business located in Charlotte, North Carolina. The bakery specializes in French and Italian-inspired pastries, cakes, cookies and artisan breads. There is only one store location, although they have a website, there is no online ordering available. In addition to the website, SLB has a Facebook page and a Twitter account. All advertising takes place through these social media sites and also by word of mouth.

Greg Sawyer is the Vice President of Sweet Lorraine’s, LLC located in Detroit, Michigan. Sweet Lorraine’s Café and Bar is a restaurant that specializes in American fare and also includes some baked goods on its menu. Sweet Lorraine’s Café and Bar has a website through which salad dressings and apparel items are sold across the country. Mr. Sawyer and his wife are pursuing a franchise of macaroni and cheese establishments called “Sweet Lorraine’s Mac n’ Cheez Kitchen.” Presently, Mr. and Mrs. Sawyer have two mac n’ cheese establishments open in two Detroit suburbs and they allegedly have received interest from an individual in North Carolina (location not identified) about extending their franchise into this state. Mr. Sawyer and his wife have a trademark on the phrase “Sweet Lorraine’s” for all restaurants, catering and baking services in the United States. That the Sawyers have this trademark has been confirmed with the United States Patent and Trademark Office.

 **Questions Presented**

Did Sweet Lorraine’s Bakery violate the Lanham Act by using the words “Sweet Lorraine’s” in their company name, thus infringing on a trademark owned by Greg Sawyer and his wife?

Although, the trademark has been confirmed by the United States Patent and Trademark Office, is the trademark considered protectable by law?

 **Short Answer**

No, Sweet Lorraine’s Bakery in North Carolina did not violate the Lanham act, in that it was not likely to cause confusion with Sweet Lorraine’s Café and Bar or Sweet Lorraine’s Mac n’ Cheez Kitchen because they all focus on completely different areas of cuisine. The Lanham Act [15 USCS § 1125](https://advance.lexis.com/api/document/collection/statutes-legislation/id/8S9D-W4W2-8T6X-7177-00000-00?cite=15%20USCS%20%C2%A7%201125&context=1000516)(a) states any person who is likely to cause confusion as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person.

No, the words Sweet Lorraine’s are not distinctive, nor have they taken on a secondary meaning, thus stopping the trademark from being protected by law.

 **Analysis**

Although Mr. Sawyer has a trademark on the use of the words “Sweet Lorraine’s”, this trademark is only protected if it is “distinctive” as a matter of law. Descriptive trademarks are only protected if they prove that they have a secondary meaning. Secondary meaning arises when consumers have come to identify a trademark with a certain product over time. In order to establish a secondary meaning for a term, a plaintiff must show that the primary significance of the term in the minds of the consuming public is the producer and not the product. Sweet Lorraine’s Café and Bar would have to prove that consumers have identified Sweet Lorraine’s to be associated only with the cuisine offered at the Michigan stores. In [Chrysler Group LLC v. Moda Group LLC, 796 F. Supp. 2d 866](https://advance.lexis.com/api/document/collection/cases/id/536H-MJ61-F04D-H2F4-00000-00?cite=796%20F.%20Supp.%202d%20866&context=1000516) the court affirmed that the Chrysler Group did not show it had a protectable mark, nor had they acquired distinctiveness through a secondary meaning. Mr. Sawyer has not shown that the phrase Sweet Lorraine’s has taken on a secondary meaning, nor is it a distinctive mark as a matter of law. [15 USCS § 1114](https://advance.lexis.com/api/document/collection/statutes-legislation/id/8S9D-W4W2-8T6X-716T-00000-00?cite=15%20USCS%20%C2%A7%201114&context=1000516)(a) states any person who shall, without the consent of the registrant use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive. Sweet Lorraine’s Bakery is unlikely to cause consumer confusion because it offers different options in the only store location, plus the online website has no option for online ordering, while Sweet Lorraine’s Café and Bar offers apparel and dressings for sale on its website. In [Hensley Mfg. v. ProPride, Inc., 622 F. Supp. 2d 554](https://advance.lexis.com/api/document/collection/cases/id/4T52-WJC0-TX4N-G0KJ-00000-00?cite=622%20F.%20Supp.%202d%20554&context=1000516) the court dismissed the complaint from Hensley Mfg. on the basis that there was no evidentiary support to the claims of trademark infringement. Although both Hensley Mfg. and ProPride, Inc used the same name for their design of a trailer hitch, the court did not agree to Hensley Mfg. claims of consumer confusion since the respondents clearly identified ProPride as the seller. In that case the affirmative defense of fair use applied to bar the trademark infringement claims since the complaint showed that ProPride’s uses of the inventor’s name were descriptive. In another case, [KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc., 543 U.S. 111](https://advance.lexis.com/api/document/collection/cases/id/4F01-5RN0-004B-Y014-00000-00?cite=543%20U.S.%20111&context=1000516), both companies were competitors in the makeup industry and used the term micro colors in description of their products. Since Lasting claimed infringement, Lasting was required to prove the likelihood of consumer confusion, but the lack of such confusion was not an element of the statutory fair use defense. Further, while the likelihood of confusion was one consideration in determining whether KP's use was fair, a finding of some degree of likely confusion by itself did not preclude the fair use defense. In the United States Supreme Court of Appeals case [Leelanau Wine Cellars v. Black & Red, 502 F.3d 504](https://advance.lexis.com/api/document/collection/cases/id/4PPP-SDC0-TXFX-83CG-00000-00?cite=502%20F.3d%20504&context=1000516), the court found that the district court failed to assess the evidence in the record to determine whether the presumption of secondary meaning had been rebutted because it erroneously determined that Leelanau Wine Cellar was not entitled to the benefit of a statutory presumption of validity as it did not register the word "Leelanau" alone. Although the court found strong evidence in the record tending to undermine Leelanau Wine Cellar's claim of secondary meaning, it ultimately declined to resolve the issue because the district court properly found that Leelanau Wine Cellar failed to demonstrate a likelihood of confusion created by Red & Black's use of the mark, which was dispositive of all of Leelanau Wine Cellar's claims.

 **Conclusion**

Sweet Lorraine’s Bakery has been operating for the past six months and has been doing well with their business, people in the local area of the one store location have learned to associate the phrase with the French bakery-style cuisine. If Mr. Sawyer were to open a Sweet Lorraine’s Mac n’ Cheez Kitchen it would be unlikely that consumers would confuse them with the bakery that has already been established there. Mr. Sawyer has not proven that the phrase “Sweet Lorraine’s” has a secondary meaning, therefore it is not protected by law. I am confident that the court will dismiss Mr. Sawyer’s complaint of trademark infringement on the grounds that the trademark is not distinctive, therefore it is not protected.

If you have any questions, feel free to contact me via email. If there is anything else you may need me to do, I would be happy to help.

Amanda Montes

B00548316

Amanda Montes

Howard & Mills, P.C.

Charlotte, North Carolina

Date

Mrs. Christine Donnelly

Charlotte, North Carolina

Dear Mrs. Christine Donnelly:

Hello Mrs. Donnelly, I hope this letter finds you in good spirits. I am writing you to give you an update on the case you have my firm, Howard & Mills, P.C., researching in the hopes of avoiding litigation about the name of your bakery, Sweet Lorraine’s. Here at Howard and Mills, P.C. we understand how much time and resources you have put into your bakery and are working our hardest to find a strong solution for you. We have been hard at work with research and finding ways to stop Mr. Sawyer from forcing you to change the name of your establishment. In this letter I will explain to you what we have found and any options you may have when pursuing this case.

Mr. Sawyer claims he has a trademark on the phrase, Sweet Lorraine’s, and that has been confirmed through the United States Patent and Trademark Office. According to the statute [15 USCS § 1114](https://advance.lexis.com/api/document/collection/statutes-legislation/id/8S9D-W4W2-8T6X-716T-00000-00?cite=15%20USCS%20%C2%A7%201114&context=1000516) Any person who shall, without the consent of the registrant, use in commerce any copy of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services in connection where such use is likely to cause confusion, is in violation of a trademark. Your establishment is a French inspired bakery, offering different breads and pastries, in Charlotte, NC. Although you have a website, you have no online purchasing available. Mr. Sawyer owns Sweet Lorraine’s Café and Bar, located in Michigan, which offers American style cuisine along with dressings and apparel offered online. Even if Mr. Sawyer branches out with his desire of opening Sweet Lorraine’s Mac n’ Cheez Kitchen in North Carolina, there would not be a strong likelihood of confusion between the companies.

Another issue that may arise would be if Mr. Sawyer’s trademark is protected by law, which I have found studies that show it is not. In order for a trademark to be protected by law it has to be distinctive, which the phrase Sweet Lorraine’s is not distinctive enough to be protected. If a mark is not distinctive it can still be protected if it has taken on a secondary meaning. In order to have a secondary meaning, the phrase will have to be recognized by consumers to be connected to one particular company use of the phrase, connecting it to the producer, not the products offered. In [Chrysler Group LLC v. Moda Group LLC, 796 F. Supp. 2d 866](https://advance.lexis.com/api/document/collection/cases/id/536H-MJ61-F04D-H2F4-00000-00?cite=796%20F.%20Supp.%202d%20866&context=1000516), an automobile manufacturer's action alleging violations of [15 U.S.C.S. § 1125(a)](https://advance.lexis.com/document/?pdmfid=1000516&crid=43bc582c-c0b6-4c23-a451-0ec386387cb5&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A536H-MJ61-F04D-H2F4-00000-00&pddocid=urn%3AcontentItem%3A536H-MJ61-F04D-H2F4-00000-00&pdcontentcomponentid=6416&pdshepid=urn%3AcontentItem%3A536W-XBT1-J9X6-H3PH-00000-00&pdteaserkey=sr1&pditab=allpods&ecomp=9f4Lk&earg=sr1&prid=39675bb2-ec6a-4946-8b62-efdd8e8568fb) which states any person who uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person. Chrysler Group was not entitled to a preliminary injunction enjoining an LLC's use of the phrase "Imported from Detroit." The manufacturer did not show that it would suffer irreparable harm or a strong likelihood of success on the merits. It was unlikely that the manufacturer could show that the geographically descriptive phrase was inherently distinctive or that it acquired distinctiveness through secondary meaning. The manufacturer also did not show a likelihood of confusion. A preliminary injunction is reserved for only the most shocking abuse of trademarks and should not be extended to cases which are doubtful or do not come within well-established principles of law. This case if very similar to yours, as Mr. Sawyer has not shown that his company will suffer irreparable harm if you continue to use the phrase “Sweet Lorraine’s” because it does not show any likelihood of confusion between the two companies. In another case, [Hensley Mfg. v. ProPride, Inc., 622 F. Supp. 2d 554](https://advance.lexis.com/api/document/collection/cases/id/4T52-WJC0-TX4N-G0KJ-00000-00?cite=622%20F.%20Supp.%202d%20554&context=1000516), the court dismissed the complaint from Hensley Mfg. on the basis that there was no evidentiary support to the claims of trademark infringement. Although both Hensley Mfg. and ProPride, Inc used the same name for their design of a trailer hitch, the court did not agree to Hensley Mfg. claims of consumer confusion since consumers clearly identified ProPride as the seller. In that case the affirmative defense of fair use applied to bar the trademark infringement claims since the complaint showed that ProPride’s uses of the inventor’s name were descriptive. In the case, [KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc., 543 U.S. 111](https://advance.lexis.com/api/document/collection/cases/id/4F01-5RN0-004B-Y014-00000-00?cite=543%20U.S.%20111&context=1000516), both companies are competitive makeup companies that use the term “microcolors” to describe products. The courts stated that since Lasting claimed infringement, Lasting was required to prove the likelihood of consumer confusion, but the lack of such confusion was not an element of the statutory fair use defense. Further, while the likelihood of confusion was one consideration in determining whether KP's use was fair, a finding of some degree of likely confusion by itself did not preclude the fair use defense. Before infringement can be shown, a trademark holder must demonstrate that it owns a valid mark, and thus a protectable interest. Once the trademark holder shows that it has a protectable interest, the holder must show that the alleged infringer's use of the mark is likely to cause confusion.

In conclusion I believe you have a strong chance of success in this case and will not be required to change the name of your establishment. In the event that Mr. Sawyer does happen to win his claims of infringement, he will not be entitled to any money from you or your business because there has not been any irreparable damage to his company caused by your use of the phrase, “Sweet Lorraine’s”. I firmly believe that the worst-case scenario would be that you would be forced to change the name of your establishment, and it is not a strong likelihood of success for Mr. Sawyer. At this point I do not believe you should change your business name and if Mr. Sawyer does file for litigation on the claims of infringement, we will be successful in protecting all the time and resources that you have put into your bakery. I hope this letter helps you understand the best-case, and possibly worst-case, scenarios for yourself, and as always, we are here for you if you have any more questions or concerns regarding this situation.

Sincerely,

Amanda Montes

Paralegal