

Hershey's Sweet Infringement Suit Against Publisher Over Book Cover

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The Hershey Corporation sought an injunction against Simon & Schuster in federal court to prevent the mega publishing house from using Hershey-owned images to market "Hershey: Milton S. Hershey's Extraordinary Life of Wealth, Empire and Utopian Dreams," which is set to be released in January 2006.

The 305-page book, by New York writer Michael D'Antonio, recounts the life of Milton Hershey, who founded and built the company to its superstar status in the candy world. Hershey used his fortune to create a substantial trust to educate and care for the medical needs of children.

According to the lawsuit, "'Hershey does not object to the content of defendant's book, or to the mere use of the word 'Hershey' in the title of the book, ... [h]owever, defendant has designed and adopted a dust jacket for the book which extensively uses Hershey's well-known marks and trade dress beyond any manner permissible under law."



Book Cover

As shown, the book's dust jacket depicts a Hershey's Kiss wrapper commonly found inside the foil, a font style and design similar to that used on Hershey's chocolate bars, and two early Hershey advertising images. Although the Hershey Corp. does not dispute the content of the book itself, the company fears that people will be confused and believe, erroneously, that the company supports or endorses the book.

Simon & Schuster, however, argued in its response to the request for injunction and restraining order that its use of Hershey trademarks is "artistically relevant" to the book's content and within the legal bounds of permissible uses of trademarks.

About Trademark

Business people use trademarks or brands on their products and services to identify them and distinguish them from those of their competitors. The terms trademark, brand, and brand name are often used interchangeably. A trademark identifies the source of a product or service (which company or individual produces or distributes it), and a brand or brand name is the name given to a certain product or service. [Excerpted from [Literary Law Guide for Authors: Copyright, Trademark and Contracts in Plain Language](#) by Tonya M. Evans]

Generally the plaintiff in a trademark action must prove that the defendant's use of plaintiff's mark has created a "likelihood-of-confusion" about the origin of the defendant's goods or services. There are basically two types of affirmative defense to trademark infringement: fair use or parody.

Only time will tell if Simon & Schuster's use is fair use since the company would probably not proceed on a parody argument as the book appears to be autobiographical rather than comedic in nature.