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5/5/2010

NEWS

Tastes like chikin

A local produce business takes heat from a fast-food chain



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BY JIM GAINES

What's the difference between a cow and a tomato? Here's the joke: Chick-fil-A can't tell.

For about three months, a small business called Eat More Produce has sold fruit and vegetables, mostly raised in its Canadian greenhouses, out of a tan building at 1111 South Orlando Ave. in Winter Park. It's the business' second location; the first is its farm and store in Kingsville, Ontario. But it's done good business in Central Florida for some time, wholesaling to restaurants, says company president Troy Gage. So they decided to open shop here and send their vegetable trucks back to Canada laden with Florida citrus.

"We want to develop a chain of Eat More Produce farm markets," Gage says, with the next Central Florida location coming in six months to a year.

Eager as they were to sell low-priced fresh produce, the owners of Eat More Produce did have one concern about moving beyond the Canadian business world, Gage says.

"We were advised to be careful about coming to the States because of frivolous lawsuits," he says as he bags tomatoes.

In late March, the Eat More Produce crew got a letter from Anne Yates, an attorney with the Atlanta office of the giant law firm Adorno & Yoss, which represents Chick-fil-A. Yates wrote that the veggie stand's name would "confuse and mislead customers" into thinking it was affiliated with the sandwich company, which trademarked "Eat Mor Chikin" (and the image of a cow holding up that slogan on a sign) back in 1995.

"In other words, you are playing off of and imitating Chick-fil-A's valuable EAT MOR CHIKIN Intellectual Property by using a domain name and trade name that are confusingly similar to Chick-fil-A's," in an area where people are familiar with the restaurant's slogan, the letter says.

Yates wrote that Eat More Produce should change its name and give up the Internet domain name

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eatmoreproduce.com, or Chick-fil-A would “pursue all available remedies.” The cows won’t mind an “Eat Produce” stand or a website called eatproduce.com, according to the letter; the objection seems to be combining “Eat” with “More” of anything.

When Gage didn’t reply, Yates sent another letter April 13, repeating the demand.

“We haven’t responded. We don’t know what to do,” Gage says. Hiring a lawyer now is “not in our budget,” but they’ll defend themselves if actually sued, he says. Neither Chick-fil-A’s corporate office nor Adorno & Yoss responded to messages from *Orlando Weekly*.

Eat More Produce has been calling itself that in Canada since March 2006 and formalized the U.S. name in December 2007, Gage says.

When they registered the name in Florida, the state had no objection, according to Eat More Produce vice president Andrew Dugard.

Before adopting the name, the Eat More Produce crew checked with a lawyer, Gage says. He was a little concerned that it was too close to Hershey’s Eat-More candy bar, but the lawyer said it was OK so long as the logos weren’t similar. Eat More Produce’s symbol is a tomato, a difficult thing to confuse with a candy bar. Or an animal.

“I think it’s a stretch, to say the least,” Gage says.

Chick-fil-A, headquartered in Atlanta, has about 1,400 restaurants in 38 states but none in Canada.

Steven Kramer, managing partner of the Kramer Law Firm in Altamonte Springs, isn’t involved in this case but says he’s seen many like it.

When a big company says it’s been harmed and can back up its complaint with millions of dollars and a team of lawyers, it’s tough for smaller firms to fight, Kramer says. Even if a small company eventually wins a federal court fight, the cost can make it a Pyrrhic victory, he says – unless the bigger company backs off due to adverse publicity.

Corporations do have to guard their slogans and logos, in which they’ve invested big money, to keep imitators from “polluting” a well-known brand, Kramer says. But similarity in wording and appearance is a continuum, not either-or, so there’s lots of legal play in gray areas, he says. Kramer knows attorneys who spend all day surfing the Internet, looking for anything that might resemble their clients’ trademarks.

“Usually the bigger the company is, the more they will police their trademark,” he says. “The standard in trademark is generally, ‘What is the likelihood of consumer confusion?’”

Cases like this one often come down to the question of whether anyone would really mix up vegetables and chicken sandwiches, Kramer says.

Trying to conflate the two is “a bit silly” says Gage. “I am quite certain we are not doing any harm to Chick-fil-A. We don’t sell fast food. We sell healthy food.”

But the owners of Eat More Produce aren’t taking this personally. They even eat at Chick-fil-A – one sits just two blocks up Orange Avenue from the vegetable stand – and recently a Chick-fil-A manager, probably unaware of the dispute, dropped by and gave Gage a coupon for a free lunch, he says.

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