

Legal Alert

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QUESTION: DID ABC NEWS BITE OFF MORE THAN IT COULD CHEW WHEN IT ATTACKED BEEF PRODUCTS INC.'S LEAN FINELY TEXTURED BEEF?

ANSWER: ABC NEWS BACKED AWAY FROM THE TABLE AND WAVED A WHITE NAPKIN WHEN IT SETTLED THE \$5.7 BILLION DOLLAR "PINK SLIME" AGRICULTURAL DISPARAGEMENT CASE!

What's the beef?

Beef Products, Inc., was the world's largest producer of lean boneless beef until Disney's ABC News attacked its product calling it "Pink Slime." The series of reports by ABC News in March 2012 cost Beef Products 80% of its business. It had to close three of its four plants and cut more than 700 jobs. Beef Products claimed it lost \$1.2 billion dollars in profits. The South Dakota Agricultural Food Product Disparagement Act allows those damages to be trebled. S.D. CODIFIED LAWS §§ 20-10A-1, 2, 3 and 4 (2018).

Beef Products processed low-fat trimmings that are left-over after slaughtering plants cut beef into steaks, roasts, and other cuts of meat. Beef Products had a patent for its process that separates the bits of lean meat from fat using a centrifuge. The Lean Finely Textured Beef is treated with a puff of ammonia hydroxide gas to kill any possible pathogens. The product is then quick-frozen. Before ABC's series of reports, the Lean Finely Textured Beef from Beef Products was used in as much as 70% of U.S. ground beef.

Disney should have used the "Pink Slime" concept in a cartoon - - not the news!

The lawyer for Beef Products told Union County Circuit Court Judge Cheryle Gering in Elk Point, South Dakota that ABC "knew their statements were factually inaccurate." The attorney told the judge: "The objective was to damage BPI's reputation and destroy its relationship with its customers and they succeeded." *Beef Products, Inc., et al v. American Broadcasting Companies, Inc., et al* (South Dakota District Court, Union County).

The lawyer for Beef Products said the derogatory term "pink slime" was used 132 times on ABC News reports. He argued that the ABC reports contained untrue and negative information. The reports said that Lean Finely Textured Beef was once dog food. ABC also said that the lean beef was from the "contaminated part of the cow" and that the beef was sprayed with disinfectant.

The attorney for ABC News told the judge: “What is at stake is the freedom of a news organization and individual citizens to report on matters of public interest without the fear of being subjected to the uncertainty, burden and risk of litigation.”

But everyone complains about the food

South Dakota statutes define “Disparagement” as “dissemination in any manner to the public of any information that the disseminator knows to be false and that states or implies that an agricultural food product is not safe for consumption by the public or that generally accepted agricultural and management practices make agricultural food products unsafe for consumption by the public.”

Moreover, the statutes state:

Any producer of perishable agricultural food products who suffers damage as a result of another person’s disparagement of any such perishable agricultural food product has a cause of action for damages and any other appropriate relief in a court of competent jurisdiction.

The disparager can be liable for treble damage. S.D. CODIFIED LAWS §§ 20-10A-1, 2 and 3 (2018).

Why did ABC lose its appetite for claiming First Amendment Rights?

Union County Judge Gering refused to dismiss the case on First Amendment grounds. In May, 2014 the South Dakota Supreme Court denied an appeal by ABC and allowed the disparagement case to proceed with discovery. On June 5, 2017, a jury trial began in Elk Point, South Dakota.

Beef Products is a second-generation business located in Dakota Dunes, an unincorporated community in Union County, South Dakota. As a result of the ABC News series, Beef Products lost its business with McDonald’s, Burger King, Taco Bell, Wal-Mart, Safeway and other grocery stores. The business was forced to close three of its four plants and more than 700 of its employees lost jobs.

ABC News may have been concerned that a jury from Union County, South Dakota might have been more worried about a thirty year-old local business and its out-of-work employees than the First Amendment Rights of a big television news conglomerate. Facing the possibility of a \$5.7 billion dollar verdict, ABC settled the case for \$177 million shortly after the jury trial began.

Don’t disparage food!

The ABC reporters should have remembered what they were told by their mothers: “Don’t complain about the food, if you want to be fed! If you can’t say something nice, don’t say anything at all! Stick to the truth!”

The damages and litigation expenses can be costly for disparagement, dissemination of false information, or defamation. “Make sure you are through chewing before you open your mouth!”