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Takeaways From Ninth Circuit's Revival Of Trader Joe's Trademark Infringement Suit Against Independent Union Over Labor-Branded Merchandise

Labor Relations Update on **October 7, 2025**

The Ninth Circuit's recent resurrection of Trader Joe's trademark infringement suit over an independent union's sale of apparel, mugs, tote bags, and other labor-branded merchandise that allegedly infringed the company's intellectual property highlights key issues at the intersection of federal labor and IP law.

The case, *Trader Joe's Co. v. Trader Joe's United*, No. 24-2826, 2025 WL 2586674 (9th Cir. Sept. 8, 2025), which also vacated an award of approximately $112,600 in legal fees to Trader Joe's United, the independent union, provides insights into how federal courts may analyze a union's alleged infringement of employer trademarks during organizing drives to, for example, raise awareness and funds through the sale of merchandise.

Background

In *Trader Joe's Co.*, the Ninth Circuit addressed why the federal trial court was wrong to dismiss the suit and award fees to the union as well as determine that the Norris-LaGuardia Act ("NLGA") prevented the trial court from granting the company injunctive relief to stop the union's sale of merchandise allegedly infringing on the company's trademarks. The NLGA places broad restrictions on federal courts from issuing injunctions linked to ongoing labor disputes.

Trial Court Holdings

The federal trial court held that as a "preliminary manner" the suit was "undoubtedly related to an existing labor dispute" under the NLGA after taking judicial notice of the union's "ongoing organizing efforts" at several stores, finding the suit came "dangerously close to the line of Rule 11," which permits courts to sanction parties for misconduct under the Federal Rules of Civil Procedure.

The court reasoned that the labor dispute's history and "weakness" of Trader Joe's argument that the union's merchandise affected the company's product market meant the case was "an attempt to weaponize the legal system to gain advantage in an ongoing labor dispute."

The court also dismissed Trader Joe's trademark dilution claim and held that the union's merchandise was unlikely to cause consumer confusion with company merchandise after applying a circuit-specific, multifactor test. The court found there were "only negligible similarities" between company and union merchandise (i.e., both were red and had a circle logo shape), noting that union merchandise used a raised fist, which is "widely recognized as a symbol of labor, social, and political movements," among other distinguishing characteristics.

As a result, the court held that "because no reasonable consumer could plausibly be confused as to the source of the Union's labor-themed and visually distinct merchandise" it required Trader Joe's to pay the union's legal fees under federal intellectual property law.

Ninth Circuit Analysis

The Ninth Circuit rejected the federal trial court's NLGA reasoning, holding that the court "prematurely concluded that the NLGA barred it from granting injunctive relief in this matter without further development of the record or the parties' positions" because the parties disputed key facts (e.g., the timing of Trader Joe's suit and its prior demand letters to the union) that "are not capable of resolution at the pleading stage."

The Ninth Circuit also held the suit was "not one of the rare trademark infringement cases" that could be dismissed at Rule 12(b)(6), finding three factors in the circuit-specific, multifactor test plausibly favored Trader Joe's consumer confusion claim: (i) the strength of Trader Joe's trademarks; (ii) the proximity/relatedness of the union's merchandise to Trader Joe's merchandise (i.e., being part of a "broader category of similar non-grocery goods"); and (iii) similarity of the trademarks (i.e., the company and union merchandise shared "capitalized lettering, the same red color and similarly stylized fonts, and both marks are found within concentric circles" such that they were "strikingly similar").

The Ninth Circuit further held that because the union never asserted a "nominative fair use defense" the federal trial court should not have dismissed Trader Joe's trademark dilution claim either. Relatedly, because the suit should not have been dismissed, the Ninth Circuit reasoned that Trader Joe's did not owe the union its legal fees.

Takeaways

While the Ninth Circuit's analysis in *Trader Joe's Co.* must be cabined to the case's specific facts and circuit-specific law, below are some potential general takeaways for employers facing unions selling merchandise that may infringe on their trademarks:

- **Employer trademark litigation over union merchandise remains viable**. Employers are not legally powerless to stop unions from selling branded merchandise that may infringe on their trademarks. There is a clear line between a union's "permissible use" of an employer's name in union-branded merchandise "for organizational or identification purposes" and a company's right to bring a federal trademark suit over a union's alleged "commercial use" of its intellectual property when selling merchandise to the public.

- **Iconic labor imagery is not necessarily a viable union defense in employer trademark litigation**. Even if a union uses classic labor imagery like a raised fist in branded merchandise that may infringe on an employer's intellectual property, that may not be enough to win early dismissal of consumer confusion claims in trademark litigation because how "a reasonable consumer might interpret" such imagery is a "question of fact that cannot be resolved at the pleading stage."

- **The NLGA does not automatically shield unions from injunctions where their merchandise may infringe employer trademarks.** Injunctive relief under the NLGA may be available to employers alleging union-branded merchandise infringes on their trademarks—even if there is an ongoing labor dispute—provided the employer's litigation focuses on the union's "commercial use" (i.e., not for labor organizing) of merchandise.

- **Unions winning early dismissal of employer trademark litigation over merchandise may be unlikely**. The more factually complex a labor dispute (e.g., pre-suit conduct, litigation chronology, etc.) and potentially related union-branded merchandise (e.g., pricing, venues, etc.), the less likely a federal court may be in granting a union's early dismissal motion when parties "dispute the significance" of such facts.

Conclusion

At a time when more employees—including those in *Trader Joe's Co.*—are organizing independent unions (i.e., unaffiliated with established unions, such as SEIU, RWDSU, and UFCW) and using provocative tactics like union-branded merchandise that arguably infringe on employer trademarks, federal labor and intellectual property law may offer employers relief.

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We will monitor developments in this and similar cases involving union-branded merchandise that allegedly infringes on employer trademarks for more legal insights.

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