

# The Sneaky Chef Cookbook Gets "Thin" Copyright Protection

Article By:

McDermott Will & Emery

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In a case involving competing cookbooks aimed at mitigation child and obesity, the U.S. Court of Appeals for the Second Circuit affirmed a district court decision dismissing claims of copyright infringement, trademark infringement and trademark dilution. *Missy Lapine, The Sneaky Chef, Inc., v. Jessica Seinfeld, Jerry Seinfeld, HarperCollins Publishers, Inc., Departure Productions LLC*, Case No. 09-4423 (2nd Cir., April 28, 2010) (Swain, J.)

Missy Lapine, author of *The Sneaky Chef: Simple Strategies for Hiding Healthy Foods in Kids' Favorite Meals*, initiated the suit shortly after Jessica Seinfeld, wife of comedian Jerry Seinfeld, published *Deceptively Delicious: Simple Secrets to Get Your Kids Eating Good Food*. Lapine alleged that Seinfeld's book copied her cookbook, the innovative expression of the idea of sneaking vegetables into children's food "by means of comprehensive instructions for making and storing a variety of vegetable purees in advance, and using the purees in specially created recipes for children's favorite foods." Lapine also alleged trademark infringement, claiming that consumer confusion would likely result from the similarity of the two cookbooks, given their titles and similar cover designs featuring a "winking woman standing near carrots and holding a plate of brownies."

The appeals court determined that the idea of tricking children into eating healthy foods by hiding vegetables and other health foods into more indulgent foods cannot be copyrighted, given the longstanding principle that "in no case does copyright protection extend to any idea, procedure, process, system, or method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such a work." According to the appeals court, similarities between the two cookbooks in the expression of this idea, such as their instructions for preparing dishes or language about children's healthy eating, constituted "unprotectible elements that flow naturally from the work's theme rather than the author's creativity." Applying the "total concept and feel" test, the appeals court affirmed the district court ruling that the two cookbooks lacked the required substantial similarity to support an inference of copyright infringement, citing *The Sneaky Chef's* "extensive discussion of children's nutrition," and *Deceptively Delicious'* "bright colors and more photographs."

The 2nd Circuit also rejected Lapine's claims of trademark infringement and trademark dilution, finding that the books differed enough in appearance to prevent consumer confusion and noting that the use of the famous "Seinfeld" name further reduces the likelihood of such confusion.

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