

FROM THE COURTS

Default Judgment Entered for Kosher Dietary Trademark Owner

by Riley Brennan

A Massachusetts federal judge has entered a default judgment for nearly \$600,000 in favor of the Rabbinical Council of Massachusetts, which owns the kosher dietary trademark, after it filed a trademark suit against a family-owned business known as Sabra Foods.

Rabbinical Council of Massachusetts, also known as KVH Kosher (KVH), filed suit against International Food Products Inc. doing business as Sabra Foods, over its continued use of its kosher trademark, despite KVH having sent Sabra a cease-and-desist letter instructing Sabra to stop using the trademark on its food products, "due to Sabra's persistent inability to comply with the terms of their license among other breaches."

U.S. District Judge Angel Kelley of the District of Massachusetts granted KVH's motion for default judgment, enjoining Sabra from current and future use of KVH's trademark and granting a total recovery of \$593,829.67.

The court broke down the recovery to include actual damages of \$175,000 as a disgorgement of Sabra's profits, treble damages in the amount of \$525,000, civil penalties in the amount of \$54,000, plus attorney fees and costs for \$14,829.67.

KVH brought three claims against Sabra, including dilution of its famous mark in violation of Section 43(c) of the Lanham Act, false designation of origin in violation of Section 43 of the Lanham Act, and violation of Mass. Gen. Laws ch. 94 § 156: Kosher food; labeling and display; civil penalties.

In an Oct. 24 opinion, the court granted KVH's motion, finding it satisfied the default judgment process.

In regard to dilution of famous marks, KVH claimed that Sabra "began using its Mark, which it claims is a famous mark under § 43(c) of the Lanham Act (15 U.S.C. § 1125(c)), in a manner that caused and continues to cause dilution of the distinctive quality of the Mark."

According to KVH, "consumers have purchased Sabra's products which bear the Mark with the mistaken belief that these products were kosher and certified by KVH, and thus are likely to no longer trust the KVH Mark and may cease to trust the Mark as evidence that products have been properly certified as kosher by KVH in strict compliance with the Jewish dietary laws."

The court determined that KVH's pleading established that it met the first three elements of dilution, with KVH having pleaded sufficient facts to prove that it owns the mark, and that Sabra is making commercial use of the mark in commerce. KVH also succeeded in establishing that Sabra adopted the mark after it became famous, and in showing that Sabra's mark dilutes its own mark, said the court.

It further held that Sabra's use of the mark constituted tarnishment and blurring.

"KVH asserts that consumers have purchased Sabra's products bearing the KVH Mark with the mistaken and/



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or false belief that such products were certified by KVH, which may lead them to no longer trust the KVH Mark and to cease to trust the Mark as evidence that products have been properly certified as kosher by KVH in strict compliance with Jewish dietary laws," Kelley wrote. "This fulfills the standard for tarnishment 'that plaintiff's mark will suffer negative associations through defendant's use' as the use of the Mark for non-kosher products directly impacts consumers' trust in KVH's Mark as certification of kosher standard."

This also constituted as blurring as "Sabra's use of the Mark for its non-kosher products may affect the Mark's ability to serve as a unique identifier for properly certified kosher products, which is the purpose of KVH's Mark," the court said.

Therefore, the court found that KVH succeeded on its claim that Sabra violated the Lanham Act through dilution of KVH's famous Mark.

In regard to KVH's claims of false designation of origin, the court held that its alleged facts satisfied its claim.

"While Sabra is not through its display of KVH's Mark advertising that its products were manufactured by KVH, the nature of the Mark that KVH bestows upon products is such that the Mark itself conveys information about the products' origin regarding the production processes that must adhere to strict kosher guidelines, which is certified by KVH. Accordingly, the likelihood of confusion regarding the products' origin is high," Kelley said.

The court also held that KVH's claims for violation of Mass. Gen. Laws ch. 94 Section 156 succeeded, as KVH's mark "is by its nature and purpose a sign or mark that identifies a food product as being kosher," and that Sabra's use could reasonably "cause a reasonable person to believe a representation is being made that the food being sold is kosher."

In granting KVH's motion for default judgment, the court enjoined Sabra from all unauthorized use of the mark and ordered it to remove infringing products from the marketplace and its website, to destroy all infringing labels, and pay damages totaling \$593,829.67.

Riley Brennan reports for Law.com, an ALM affiliate of the Daily Business Review. Contact her at rbrennan@alm.com.



CITY OF DORAL NOTICE OF PUBLIC HEARING

All residents, property owners and other interested parties are hereby notified of a **COUNCIL MEETING** on **December 6, 2023 beginning at 6:00 PM** to consider a text amendment to Chapter 80, Sign Regulations of the City's Land Development Code. The City Council will consider this item for **FIRST READING**. The meeting will be held at the **City of Doral, Government Center, Council Chambers** located at **8401 NW 53rd Terrace, Doral, Florida, 33166**.

The City of Doral proposes to adopt the following Ordinance:

ORDINANCE No. 2023-34

AN ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING/DENYING A TEXT AMENDMENT TO THE CITY'S LAND DEVELOPMENT CODE, BY AMENDING CHAPTER 80 "SIGN REGULATIONS", TO CREATE MEDIA AND PUBLIC SERVICE BOARD WALL SIGNS; AMENDING SECTION 80-2, "PURPOSE AND INTENT" FOR RENUMBERING PURPOSES ONLY; AMENDING SECTION 80-3, "DEFINITION" TO CREATE NEWLY DEFINED TERMS AND REDEFINE EXISTING TERMS; AMENDING SECTION 80-38, "TIME LIMITATION OF PERMITS," TO EXTEND THE LIMITATIONS ON THE PERMITTING OF SIGNS; AMENDING SECTION 80-74 "PENALTY; ENFORCEMENT;" AMENDING SECTION 80-102 "PROHIBITED SIGNS" TO PROVIDE FOR AN EXCEPTION TO THE PROHIBITION ON OFF-PREMISES SIGNS FOR MEDIA AND PUBLIC SERVICE BOARD WALL SIGNS; AMENDING SECTION 80-258 "COMMERCIAL RETAIL SIGNS" TO PROVIDE FOR MEDIA AND PUBLIC SERVICE BOARD WALL SIGNS, AND REGULATIONS FOR SAME; PROVIDING FOR INCORPORATION INTO THE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS, AND PROVIDING FOR AN EFFECTIVE DATE

HEARING NO.: 23-12-DOR-01

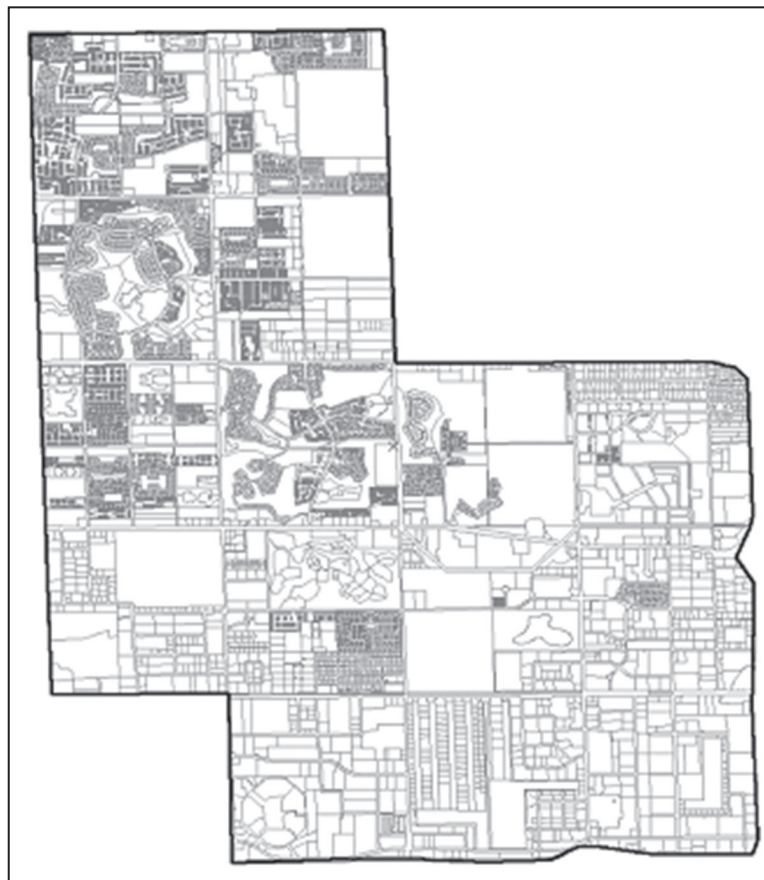
APPLICANT: City of Doral (the "Applicant")

PROJECT NAME: Text Amendment to Chapter 80, Sign Regulations of the City's Land Development Code

LOCATION: Citywide

REQUEST: Text Amendment to Chapter 80, Sign Regulations of the City Land Development Code, to create a new commercial retail sign, defined as a "Media and Public Service Board Wall Sign," that allows for on or off-premises advertising in the Downtown Mixed Use Zoning District, creating an exemption to the prohibition on off-premises signs for Media and Public Service Board Wall Signs, extending the time limitations for permitting of signs, and providing for regulations specific to Media and Public Service Board Wall Signs.

Location Map



Inquiries regarding the item may be directed to the Planning and Zoning Department at 305-59-DORAL.

Pursuant to Section 286.0105, Florida Statutes, if a person decides to appeal any decisions made by the City Council with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law. In accordance with the Americans with Disabilities Act, any person who are disabled and who need special accommodations to participate in this meeting because of that disability should contact the Planning and Zoning Department at 305-59-DORAL no later than three (3) business days prior to the proceeding.

Connie Diaz, MMC
City Clerk
City of Doral