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B-dubs wins on color, not name in suit

Premium content from Minneapolis / St. Paul Business Journal by Jim Hammerand, Staff reporter

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Buffalo Wild Wings Inc. settled a federal lawsuit against an alleged copycat competitor shortly before the two companies were to go before a jury.

Terms of the settlement approved earlier this month are confidential, but intellectual property lawyers who were not involved in the dispute said the chicken wing chain's lawsuit may have done its intellectual property portfolio more harm than good.

The competitor, Cincinnati-based Buffalo Wings & Rings, will not use yellow in its logos, yellow paint on interior walls or yellow in the restaurant's color scheme or materials except minimally, according to a public court order that was part of the settlement. The competing chain also agreed not to use the "Wing Tuesdays" name trademarked by Buffalo Wild Wings. New restaurants must comply with the restrictions immediately, while existing restaurants have until early 2014 to make changes.

Buffalo Wild Wings was "pleased with the outcome," General Counsel [Emily Decker](#) said in a statement.

"Defending our brand identity and the equity we've built across the country is a matter we take very seriously and we will continue to do so as we build our brand around the globe," she said.

Buffalo Wings & Rings is "very satisfied" with the resolution, which allows it to continue using its name and other trademarks, while abandoning old logos, spokeswoman [Melanie Murray](#) said.

"We began rebranding a couple of years ago and we're still retrofitting several existing stores. The

terms give us a period of time to convert what few are left," she said, adding that the chain's color scheme is now buffalo sauce orange and celery green. "We just want to move forward."

Intellectual property lawyers who reviewed the case said the public terms of the settlement indicate Buffalo Wild Wings bit off more than it could chew. Buffalo Wild Wings filed the suit in 2009, demanding that Buffalo Wings & Rings abandon its name and stop using decor and branding that would cause customers to confuse the two chains.

"When you come up with trademarks with words that your competitors need to use, like if you sell buffalo wings and have that in your name, those are very hard trademarks to enforce," said **Fish & Richardson** trademark lawyer [Joel Leviton](#).

In this case, U.S. District Judge [John Tunheim](#) earlier ruled that Buffalo Wild Wings' name was not a strong trademark, and that the chain could not broadly protect its trade dress against mimicry.

"It would be absurd to suggest that Buffalo Wild Wings' competitors cannot utilize wide open interiors with a spacious feel, a heavy emphasis on sports and television, bold patterns and the color yellow," he wrote in a June order that was withdrawn under the settlement.

"It's striking to me how little they got," said Merchant & Gould lawyer [Scott Johnston](#). "They took a case all the way to the cusp of trial, probably spent a lot of money, and basically what they got was an agreement not to use yellow. I suspect that if that offer had been made at the beginning of this case, Buffalo Wings & Rings would have taken it."

The case is a reminder of the importance of thoughtful business branding, Johnston said.

"The more distinctive, arbitrary or fanciful a trademark is, the easier it's going to be to protect and defend," he said.

Minneapolis-based law firm Fredrikson & Byron's [Lora Friedemann](#) represented Buffalo Wild Wings. Buffalo Wings & Rings was represented by [Kevin Hickey](#) at [Bassford Remele](#), also in Minneapolis. Both declined comment.

Buffalo Wild Wings Inc.
CEO and president: Sally Smith
Headquarters: Golden Valley
2011 revenue: \$784.5 million
Restaurants: 817
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Business: Restaurant chain
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