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Shake Shack seeks trademark on use of metro Detroit Chicken Shack's name

By [CHAD HALCOM](#) June 06, 2015 8:45 a.m



Photo by CHICKEN SHACK INC. Chicken Shack means chicken in metro Detroit. But does Shake Shack want it to mean chicken sandwiches?

Which came first, the **Chicken Shack** or the Chicken Shack sandwich?

That's a question the **U.S. Patent and Trademark Office** will figure out this summer.

To metro Detroit chicken connoisseurs, the name conjures up the nearly 60-year history of Chicken Shack broasted chicken, a chain of restaurants created by franchisors Berkley-based **Sobeck Enterprises Inc.** The Sobecks own a similar trademark to the trademark name application under review by the patent office — an application filed by national fast food chain **Shake Shack Inc.**

New York-based Shake Shack (NYSE: SHAK), the fast-growing burger and milkshake chain that raised \$105 million at a January IPO, intends to identify the new trademark

with chicken sandwiches, according to an April 20 application brought by **SSE IP**, part of Shake Shack's parent company.

The key differences in the trademark claims boil down to this: Chicken Shack holds a trademark on specific stylized renditions of its name, sign fonts and logo design, said Sobeck attorney Mark Cantor, president of Southfield IP law firm **Brooks Kushman PC**. Shake Shack, meanwhile, is seeking protection of the phrase "Chicken Shack" itself — a longshot, Cantor added, since others have failed to win that in the past.

How concerned is the Berkley restaurant chain about the competing trademark application? So far, the issue hasn't ruffled its feathers too much.



Neil Sobeck: "It's kind of flattering."

Said Neil Sobeck, vice president of the product division at **Chicken Shack Inc.**: "It's kind of flattering, and definitely not something we'd ever considered might have happened. It must be a good name we have."

Sobeck is the grandson of company founders John and Iola Sobeck. Chicken Shack has 21 regional locations plus a mobile restaurant trailer the company uses at major outdoor events in the area. Two of these, in Shelby Township and Clinton Township, have opened just since March 2014 and the company is considering future locations in northern Ohio, Sobeck said.

Patent attorneys also aren't clear on whether there is any real meat yet to Shake Shack's chicken expansion plans.

At the moment, there may not be much to worry about, said Cantor.

"The issue is, nothing is happening in real life right now," he said. "The only activity we're seeing is at the trademark office."

Food industry chatter



Photo by BUCK ENNIS / CRAIN'S NEW YORK BUSINESS. A Shake Shack in Manhattan. The chain has 40 U.S. locations — but none in Michigan.

Sobeck said once national stories began to appear in May about rumors that Shake Shack planned to launch a line of chicken products or a spinoff restaurant, customers have begun asking the Berkley company about it.

"So many people in our restaurants sent emails or mentioned it to our family or the employees asking what we were going to do about that," he said. "Our customers are very loyal, and working at the store you see a lot of them all

the time and get to know them. So you develop a rapport with them, and they're brand-loyal."

But again, Shake Shack has not started using Chicken Shack as a brand or even obtained the trademark it wants — and even if it did there would only be a potential legal problem if it caused some confusion or "diluted" the market for the local chain's customers or suppliers, Cantor said.

Shake Shack did not respond to voicemail or email requests for comment on this story last week. Robin Silverman, an IP attorney for the company at **Golenbock Eiseman Assor Bell & Peskoe LLP** in New York, deferred comment to her client.

Shake Shack has 40 U.S. locations (and 27 stores overseas) but none is in Michigan or Ohio. And currently, the only chicken menu item at Shake Shack is the chicken dog, a hot dog made with chicken, apple and sage sausage.

If the trademark name battle did come to Chicken Shack's own market, it may not be a question of legal standing as much as financial stamina, said Kenneth Dalto, owner of Farmington Hills-based **Kenneth J. Dalto & Associates** and a consultant in several industries including restaurants.

"Shake Shack did an IPO not even six months ago and they are sitting on some money right now," he said. "It could hire a very powerful New York law firm if it's intent on the brand, and Chicken Shack is a good family company, but maybe it doesn't compete on that level.

"If it does get into litigation, right and wrong is hard to sort out sometimes. You're still able to get the other company's mind off of running its business and even if you lose it's still a two-year battle."

A simple beginning

Sobeck said perhaps the biggest irony is in how Chicken Shack itself came by the company name, when John Sobeck was still building the first restaurant in Royal Oak and discussing possible names with a friend.

"He was talking about different names at the time and his friend pointed out there was a pretty well-known Army-Navy surplus shack near there. They were known as the surplus shack, and the guy said you should just call your place the chicken shack. He did, and the name stuck," he said.

"It's interesting when you think about how much other companies put into market research and testing out names before they settle on something like that."