

Title and Citation: [PIZZA HUT, INC., Plaintiff-Counter Defendant-Appellee, v. PAPA JOHN'S INTERNATIONAL, INC.; Papa John's USA, Inc., Defendants-Counter Claimants-Appellants. 227 F.3d 489. 2000](#)

Procedural History: Pizza Hut originally filed a civil action suit in the United States District Court for the Northern District of Texas, the suit charged Papa John's with false advertising in violation of Section 43(a)(1)(B) of the Lanham Act. The appeal was sent to the United States Court of Appeals, Fifth Circuit and the opinion is taken from this appeals circuit.

Summary of Facts: The Pizza Hut, Inc., v. Papa John's International, Inc., appeals case introduces a false advertising claim under section 43(a) of the Lanham Act, a jury verdict resulted in a favorable outcome for the plaintiff, Pizza Hut, Inc. The original case and subsequent appeal centered around Papa John's slogan, "Better Ingredients. Better Pizza." Pizza Hut argued that "the slogan, when viewed in the context of Papa John's overall advertising campaign, conveys a false statement of fact actionable under section 43(a) of the Lanham Act [Pizza Hut, Inc. v. Papa John's International, Inc., 227 F.3d 489, 491 (5th Cir. 2000).]" Papa John's offered the counter argument that their slogan is not a statement of fact, rather, it is a statement of non-actionable puffery, which is an "exaggerated advertising, blustering, and boasting upon which no reasonable buyer would rely," or "a general claim of superiority over a comparative product that is so vague, it would be understood as a mere expression of opinion [Pizza Hut, Inc. v. Papa John's International, Inc., 227 F.3d 489, 496 (5th Cir. 2000).]" Pizza Hut sought injunctive relief and therefore merely needed to provide evidence that Papa John's slogan and advertisements tended to deceive customers without the need to prove actual deception. At the jury trial, a verdict was found for the Plaintiff (Pizza Hut, Inc.) and the court issued a broad injunction permanently barring any future use of the slogan by Papa John's. The U.S. Court of Appeals, Fifth Circuit reversed, vacated, and remanded the ruling with instructions for entry of judgment for the Defendant (Papa John's).

Issues: This case considers puffery in Papa John's "Better Ingredients. Better Pizza." advertisements and the limit beyond which it becomes deceptive. This case also examines whether Papa John's slogan "Better Ingredients. Better Pizza." violates section 43(a) of the Lanham Act as a stand-alone phrase and in the context of the entire advertising campaign.

Holding: Reversed, Vacated, and Remanded with instructions. The judgment of the U.S. District Court for the Northern District of Texas denying Papa John's motion for judgment as a matter of law was Reversed; the final judgment of the U.S. District Court for the Northern District of Texas was Vacated; and the case was Remanded for entry of judgment for Papa John's [Pizza Hut, Inc. v. Papa John's International, Inc., 227 F.3d 489, 496 (5th Cir. 2000).]

Opinion/Reasoning: The U.S. Court of Appeals, Fifth Circuit found that Papa John's slogan "Better Ingredients. Better Pizza." alone did not provide a measurable statement of fact that a consumer would reasonably rely on and therefore did not violate section 43(a) of the Lanham Act. Additionally, in regards to the second issue, the court found that Papa John's "while the slogan, when appearing in the context of some of the post-May 1997 comparative advertising—specifically, the sauce and dough campaigns—was given objectifiable meaning and thus became misleading and actionable, [Pizza Hut, Inc. v. Papa John's International, Inc., 227 F.3d 489, 496 (5th Cir. 2000)]" Pizza Hut failed to provide adequate evidence that the misleading facts affected consumer purchasing decisions. Since Pizza Hut failed to produce adequate evidence of a violation of the Lanham Act, the court ruled that the district court made an error in denying Papa John's "motion for judgment as a matter of law [Pizza Hut, Inc. v. Papa John's International, Inc., 227 F.3d 489, 496 (5th Cir. 2000).]"

Concurring Opinion: The U.S. Court of Appeals, Fifth Circuit agreed with the District Court's ruling that the post-May 1997 comparative advertising violated section 43(a) of the Lanham Act, however they ruled that Pizza did

not produce adequate evidence of the Lanham Act violation thus reversing, vacating, and remanding the verdict.

Dissenting Opinion: I would agree with the U.S. Court of Appeals, Fifth Circuit ruling. Regarding the issue of Papa John's slogan "Better Ingredients. Better Pizza.," as a stand-alone, I agree that the reasonable consumer would see this as an exaggerated statement of opinion rather than fact. Taking the second issue of Papa John's slogan as it relates to the larger advertising campaign into account, while the Papa John's comparison ads were misleading and made the slogan quantifiable, Pizza Hut lacked adequate evidence to prove that consumers would rely on this information to make a purchasing decision. The surveys provided as evidence by Pizza Hut never explicitly asked consumers about the connection between the "Better Ingredients. Better Pizza." slogan, and therefore does not provide a direct connection to the Lanham Act violation.

Questions:

1. Had the District Court simply enjoined the use by Papa John's of the slogan "Better Ingredients. Better Pizza.," in future competitor comparison ads, would the appeals court have been more likely to uphold the lower court's ruling?
2. Would the admittance of Papa John's special interrogatories to Pizza Hut's prima facie have provided sufficient evidence for the appeals court to have upheld the District Court's ruling?
3. Would Pizza Hut have had more success suing Papa John's for defamation regarding their comparison ads (specifically the tomato sauce and dough ads)?

Personal Response to Questions posed:

1. As stated in the appeals court's ruling, it seems that the broad injunction based on the grounds that the slogan was "forever tainted" was a point of contention in their decision. Had the lower court simply barred the future use of the slogan in comparison ads, the appeals court likely would not have found that the District Court overreached, they also likely would have agreed with an injunction on the future use in comparison ads and been more likely to uphold the lower court ruling altogether.
2. Papa John's wanted to include two special interrogatories, which would have specifically asked the jury whether they believed that the misrepresentations in the ads affected consumer purchasing decisions. Given that the court ruled that Pizza Hut did not provide sufficient evidence proving this matter, had the jury answered yes to these interrogatories, it would have provided Pizza Hut with the adequate evidence for the appeals court to uphold the ruling in their favor.
3. Defamation is defined as "Any intentional false communication, either written or spoken, that harms a person's reputation; decreases the respect, regard, or confidence in which a person is held; or induces disparaging, hostile, or disagreeable opinions or feelings against a person (defamation, 2014)." Having this definition in mind, Pizza Hut likely would have been able to bring a civil suit against Papa John's for defamation over their comparison ads. However, given that Pizza Hut admitted that Papa John's statements were facts, and they did not contest that they were fact, they likely would not have been able to win a defamation suit due to falsity.