

The Curious Case of Smucker's Uncrustables

- Let us consider the curious case of the Smuckers Uncrustables



Quick History

- The J.M. Smucker Company is over a century old and was founded in 1897 by Jerome Smucker.,
 - First product was sold on the back of a horse drawn wagon.
 - incorporated in 1921.
- The Uncrustable sandwich was developed in 1995 by David Geske and Len Kretchman to sell to schools.
 - They were very simply two pieces of bread that were pressed together with a filling between (like peanut butter and jelly) and then the edges were crimped. They filed for and got a patent on the crimping process.
 - The actual claim in the patent filing:
 - A sealed crustless sandwich, comprising: a first bread layer having a first perimeter surface coplanar to a contact surface;
 - at least one filling of an edible food juxtaposed to said contact surface;
 - a second bread layer juxtaposed to said at least one filling opposite of said first bread layer, wherein said second bread layer includes a second perimeter surface similar to said first perimeter surface;
 - a crimped edge directly between said first perimeter surface and said second perimeter surface for sealing said at least one filling between said first bread layer and said second bread layer; wherein a crust portion of said first bread layer and said second bread layer has been removed.
 - Many viewed this as an example of poor evaluation by the patent office.
- Smucker's purchased their company and patent in 1999.

Patents:

- A number of patents have issued for various versions of sealed crustless sandwiches.
- These include U.S. Patent 2,463,439, U.S. Patent 3,782,270, U.S. Patent 6,004,596 and U.S. Patent 6,874,409.
- The '596 patent has been especially controversial since it appears to the general public as if an obvious and well known invention has been patented.
- Many intellectual property experts and members of the general public view this patent as an example of the patent office's inability to properly examine patent applications.[2] The patent examiner cited only seven previous patents issued between 1963 and 1998, and a 1994 book called *50 Great Sandwiches* that were deemed relevant to the novelty and nonobviousness of the invention. He concluded that the invention was indeed novel and not obvious and allowed the claims
- On September 25, 2007, the United States Patent and Trademark Office concluded its reexamination of the '596 patent and issued a certificate cancelling all claims
 - http://en.wikipedia.org/wiki/Sealed_crustless_sandwich
 - Adam B. Jaffe and Josh Lerner, *Innovation and its Discontents: How our broken patent system is endangering innovation and progress, and what to do about it* ; Princeton, NJ: Princeton University Press, 2004.

The patent is infringed

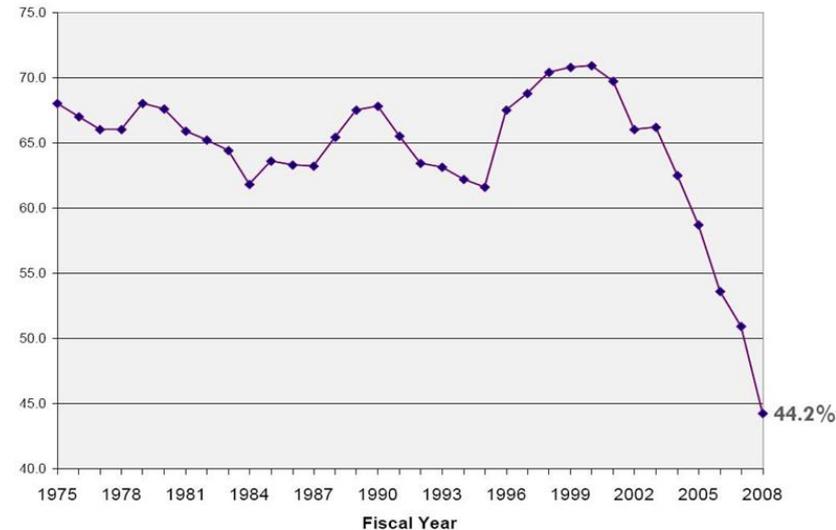
- Albie's Foods, a small Midwestern company, began selling crust less peanut butter and jelly sandwich's.
- Smucker's legal team sent Albie's Foods a cease and desist order for violating Smucker's patent in 2001. They demanded that they quit making these, and then filed suit when Albie refused. It went to Federal Court.
- Albie claimed that *"a pocket sandwich with crimped edges and no crust was called a "pasty" and had been a popular dish in northern Michigan since the nineteenth century."* (http://en.wikipedia.org/wiki/Sealed_crustless_sandwich)
- The case was settled and eventually dismissed.
- Smuckers then tried to narrow their claims, but the patent was rejected in 2003 based upon "prior art." (Referring to the "pasty.")
- Smuckers appealed but lost on appeal in 2006.
- At that point Smuckers dropped further action and continued to sell the uncrustables under a **trademark**.

Patents are useful, but they require vigorous defense

- The moral of the story: Patents are not that hard to obtain, but they are very difficult to defend.
- It often costs far more to defend a patent than to obtain a patent.
- In this case, it was a small company that fought back against a big company and won. That is usually difficult to do.
- Large companies sometimes infringe a patent, knowingly or not, and then rely on their extensive legal teams and deep pockets to keep doing what they are doing as the case works its way through court or the smaller company settles to minimize their expenses.



Allowance Rate



Questions: Due Thursday November 13, 2014 by midnight.

Answer the following questions from the point of view of Marketing's 4 "Ps" and from the protection of their intellectual property and market position.

1. Product: They tried to protect their market position with a patent. How could this product be differentiated from others in other ways?
2. Price: Do you think that losing patent protection affected their pricing strategy? Why or why not?
3. Place: How does Smuckers take their product to market?
4. Promotion: Have a look at how Smuckers is presently promoting the "Uncrustable" products. Did losing the patent affect the way they are promoted? If so, how? Can promotion help overcome the loss of patent protection? If so, how? How does Smuckers deal with the fact that they have a rather unusual and, some would say, undesirable company name?

Please answer these questions in an email to me at jack_wilson@uml.edu