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Chocolate chip makers fight over logo

Premium content from Minneapolis / St. Paul Business Journal by John Hageman, Staff Writer

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John Hageman

Staff Writer - *Minneapolis / St. Paul Business Journal*

[Email](#)

Log House Foods Inc. is asking a federal judge to decide whether the Plymouth-based chocolate chip maker's yellow bags are too similar to those of Nestlé USA Inc.'s Toll House brand.

Log House filed the preemptive lawsuit Dec. 7 in Minneapolis' U.S. District Court, nearly one month after chocolate powerhouse Nestlé threatened to sue over the packaging. Nestlé followed with a federal lawsuit in Cleveland on Dec. 12.

Log House asked the court to rule that its packaging does not unfairly imitate Nestlé's because the bags are different hues of yellow and share features that are not unique enough for Nestlé to claim as its own.

Glendale, Calif.-based Nestlé declined to comment on the suit, but in correspondence between the two companies claimed that Log House's use of a yellow bag for its semi-sweet chocolate chips violates the Toll House trade dress. Both rectangular-shaped packages are yellow with a clear section shaped like a chocolate chip on the front.

Nestlé also claimed the Log House logo infringes on the Toll House brand. Both images depict a house surrounded by trees.

Toll House was introduced in 1939, and Nestlé said Log House didn't start selling baking chips until after the Toll House trade dress and trademark gained recognition.

Nestlé warned in November that it would sue unless Log House changed its packaging. Log House's sale of "semi-sweet chocolate chips in similar yellow packaging ... to the same consumers, in the same stores will inevitably cause consumer confusion," Nestlé said. It wants Log House to destroy the allegedly similar packaging and logos. It also wants to recover profits lost to trademark infringement, attorney fees and punitive damages.

Log House has been using yellow packaging for about 40 years, President [Josh Kasdan](#) said in a letter to Nestlé. Log House only recently began to sell its semi-sweet chocolate chips in Walmart stores, competing directly with Nestlé.

"We obviously have a difference of opinions with regards to merits of Nestlé's contentions," said Log House attorney [Chris Cuneo](#). "However, we will continue to talk to Nestlé to see if there's a mutually acceptable way to resolve the situation."

Nestlé had similar complaints in 2000, but no litigation occurred.

Log House is represented by Minneapolis-based law firm Lindquist & Vennum, Nestlé by Chicago-based [Mayer Brown](#).

jhageman@bizjournals.com | (612) 288-2109

Log House Foods Inc.

Business: Baking goods manufacturer

President: Josh Kasdan

Headquarters: Plymouth

Web: loghousefoods.com