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Farm Group Beats Ex-Members In Fight Over 'Grange' Name

By **Bonnie Eslinger**

Law360, Los Angeles (July 15, 2015, 10:56 PM ET) -- An organization for California farmers can no longer use the word "grange" in its name because the word is trademarked by a national organization it split from in 2013, a California judge ruled Tuesday, saying he wasn't convinced the word is generic.

U.S. District Judge William Shubb granted the National Grange of the Order of the Patrons of Husbandry's motion for summary judgment in its trademark infringement lawsuit against the California State Grange, which argued that "grange" is defined in the dictionary as a generic term and therefore not protectable as a trademark.

As support for its contention that "grange" is generic, the California State Grange offered an excerpt from the 1980 edition of the Random House Dictionary, but it didn't satisfy Judge Shubb. That dictionary defines the word as a "farm with nearby buildings" and provides a secondary use of the word that's capitalized, "a lodge or local branch of a farmers' association in the U.S." indicating it is a proper noun referring to plaintiff's group, Shubb said.

"No trier of fact could reasonably conclude from these dictionary definitions that 'grange' is a generic term denoting a local branch of any farmers' association," Judge Shubb wrote. "Beyond the dictionary, there is nothing before the court suggesting plaintiff's use of 'grange,' particularly when capitalized, is generic."

The judge's ruling also ended a cross-motion for summary judgment from the California State Grange, which had its charter to the national group revoked in April 2013 because of an undisclosed dispute.

During a hearing over the motions, the California group's president, Robert McFarland, told the court only that the disaffiliation was the result of "political dispute" between the parties, without offering additional explanation, Judge Shubb wrote in his order.

Both parties agree, however, that the use of the word "grange" by both organizations was causing some consumer confusion, the judge added, a necessary element to prevail on a trademark infringement claim under the federal Lanham Act.

The National Grange argued that use of the word by its former California chapter on its website, newsletters and other materials would likely cause consumers to believe the independent organization was still affiliated, the judge wrote in his order. And both organizations offer similar services, the judge said.

Adding to the confusion, in 2014 after the California State Grange separated from the

parent group, some of its members voted to organize a nationally affiliated group under the name Grange of the State of California's Order of Patrons of Husbandry.

"It is foreseeable that a prospective or current member would be uncertain as to which California Grange originates from the national organization," Judge Shubb wrote. "Defendant has even conceded that two California organizations using the name 'Grange' would — and has — caused consumer confusion."

The National Grange was founded in 1867 to promote the interests of farmers and farming in the United States and has a network of about 2,000 local chapters across the country, according to Tuesday's order. The former California chapter became a member in 1873.

National Grange attorney James Bikoff of Smith Gambrell & Russell LLP told Law360 on Wednesday that Judge Shubb's decision is important because it could be applied to any organization with a hierarchical structure, such as a religious or fraternal association.

"If a chapter of the Masons or the Lions Club or the Presbyterian Church secedes from the main church, the question becomes whether they can continue to use the name," Bikoff said. "I think this ruling makes it clear that they can't. The key here is disaffiliation."

Counsel for the California State Grange was not immediately available for comment Wednesday.

The National Grange is represented by David Heasley and James Bikoff of Smith Gambrell & Russell LLP and Michael L. Turrill of Arent Fox LLP.

The California State Grange is represented by Anthony J. Ellrod of Manning & Kass Ellrod Ramirez Trester LLP.

The case is National Grange of the Order of Patrons of Husbandry v. California State Grange, case number 2:14-cv-00676, in the U.S. District Court for the Eastern District of California.

--Editing by Brian Baresch.

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