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Put up your Duke

Duke's Mayonnaise maker takes issue with Greenville sandwich/food company

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Impact of ports

Report shows \$63.4 billion economic boost comes from state ports

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Employee perk

Adidas/Reebok opens limited access store in Greenville

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Opportunity zone

Investors catching on to limited time benefit of investing in the right places

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FROM DUST TO LUXURY

REDEVELOPMENT STARTS ON ONE OF THE WORLD'S LARGEST OLD MILLS

The hulking structure that gives the Woodside community its name is in the hands of an Atlanta developer with a plan for preserving history and creating splendor ► SEE PAGE 8

Developer Randy Moore said the interior of the Woodside Mill is in remarkably good shape for a building first under construction 110 years ago. (Photo/Ross Norton)

Greenville County tops the state for mortgage loan approval

By Ross Norton
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In Focus

Borrowers in Greenville County are approved for mortgage loans at a higher rate than in any other county in South Carolina. Four Upstate counties are in the top 10, according to a report on data compiled by SmartAsset.

Data analysts compared the number of mortgage applications in each county to the number approved by lenders, accord-

ing to a news release.

Greenville County's loan funding rate was 65.69%, just ahead of No. 2 York County, where the rate was 64.61%. Horry County was next at 64.29%

Other Upstate counties were Anderson (62.10%) at No. 6, Oconee County (61.34%) at No. 7 and 10th ranked Pickens

County, which had a loan funding rate of 61.13%. Abbeville County had the lowest rank of the Upstate counties, with 46.63%, which was 30th among the state's 46 counties. Spartanburg County had a rate of 60.07%.

Lee County had the lowest rank in the state, with just 27.79% of loans approved, according to SmartAsset. Lee County is not just the bottom of the state rankings,

See APPROVAL, Page 15 ►

Big impact of small builds

Residential housing economy is \$44.7 billion

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Battle over Duke name may be headed to court

By Ross Norton

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An enterprising Eugenia Duke did so well during the early part of the 20th century that she separated her businesses into a sandwich company and a mayonnaise company before the Great Depression ever arrived.

She sold the sandwich company to her bookkeeper after World War I and later sold her mayonnaise company to the C.F. Sauer Co. of Richmond, Va. Now, almost a century later, it's Duke's vs. Duke as the owners of the mayonnaise (and other products) sue the owners of the sandwiches (and other products) for infringing on the Duke name and logo.

The sandwich company is now Duke Sandwich Co., Duke Brands and Duke

using in any manner packaging, labels, signs, literature, display cards, internet website, or other packaging advertising, or promotional materials, or other materials, the infringing marks or any other marks, words or names that are confusingly similar to the famous Duke's marks."

The complaint says Duke Foods has "embarked on an unapologetic mission to exploit for their own personal gain the goodwill and popularity that Duke's (the mayonnaise company) has spent the last 90 years developing and building into the Duke's brand." The complaint particularly cites labels for Duke Foods products that it says are similar in script and color to Duke's Mayonnaise labels. Duke Foods says some of that labeling was temporary to celebrate a century of business. Duke Foods also says both companies honored 100 years of Eugenia Duke's enterprise.

A Greenville attorney familiar with trademark issues says cases like this one can be difficult to sort out.

"It's very subjective," said Tim St. Clair, a Greenville attorney who leads Parker Poe's intellectual property practice. "Trademark confusion is very much in the gray zone — there are very few black and white answers."

He said the law turns to precedence set by a DuPont infringement case in order to determine whether one logo or name is confusingly similar to another.

"There is a list of factors that is almost biblical in its significance in this area called the DuPont factors, after the name of a case," he said in an email. "What you're trying to do with these factors is measure what happens in the market. For instance, one of the factors is the number of similar marks on similar goods. If you had Mars Candy Bars, Mars Potato Chips, Mars Salad Dressing and Mars Frozen Foods, and they were all from different companies, you would say, 'That's a crowded field.' And what we'd learn from that is all these different Mars formatives have existed in the past on all these things you'd find in the same grocery store with-



Eugenia Duke, pictured in this promotional material from Duke Foods, later moved to California and started another sandwich company — one that did not use the Duke name. (Image/Provided)

out confusion, so you could look in this case at whether there are any other uses of Dukes on anything in the same channels of trade."

Duke Foods/Duke Brands issued a statement saying the company also has worked to build a good Duke name and pointed out that both companies use the same name because they have the same founder.

"That is why we were blindsided Friday evening when Falfurrias Capital Partners, the new private equity owners of the company manufacturing Duke's Mayonnaise, filed suit against us in federal court in North Carolina demanding we no longer use the name Duke," said the statement, issued Oct. 7. "Our company and Duke's Mayonnaise have a shared history in pioneer entrepreneur Eugenia Duke, who sold both businesses in the 1920s. Both of our companies and their respective brands have coexisted until the recent sale of the C.F. Sauer Co., which was the longtime parent company of Duke's Mayonnaise, this summer to Falfurrias Capital Partners."

Through a spokesman, Duke Foods suggested the common name was not a

concern until Falfurrias bought Sauer Brands.

Falfurrias, meanwhile, issued its own statement through a Charlotte-based advertising agency.

"Sauer Brands is the sole owner of the Duke's brand, trademarks, logos and trade names used on Duke's Mayonnaise and the full line of Duke's products," the statement says. "As the steward of this iconic and beloved brand, it is our responsibility to ensure that loyal Duke's customers receive the unmatched quality and flavor they have come to expect in the 90 years since we purchased the Duke's brand from Eugenia Duke in 1929. While it had been our desire to reach an amicable resolution, we will take all necessary steps to protect the interests of our customers and the integrity of the Duke's brand."

Duke Foods responded with another statement: "The discussions the parties have had for the past several months are confidential. Needless to say, we disagree with Sauer's characterization of those discussions. We continue to ask the question of why now? Sauer did not object when Duke Foods expanded into retail grocery more than a decade ago and Sauer then partnered with us on the 2017 celebration of the 100th anniversary of Eugenia Duke founding her company. Sauer informed us of its alleged concerns only after discussions to sell the Duke's Mayonnaise brand to Falfurrias Capital had begun."

According to attorney St. Clair, in the end, what matters is not what the companies think, but what the public thinks.

"It all circles back to trying to measure what will actually happen in commerce," he said. "The fundamental purpose of trademark law is not to reward the trademark owner — the fundamental purpose of trademark law is to avoid consumer confusion." 

"It's very subjective. Trademark confusion is very much in the gray zone — there are very few black and white answers."

Tim St. Clair
attorney, Parker Poe

Foods. It is based in Greenville with headquarters on Main Street. Duke's Mayonnaise remained a distinctive label among the Sauer brands. The company has a condiment plant in Mauldin. The board of the 132-year-old Sauer company, now called Sauer Brands, announced earlier this year that it was selling the enterprise to Falfurrias Capital Partners of Charlotte.

Sauer Brands Inc. filed a complaint on Oct. 4 in Charlotte asking for a jury trial to stop the Greenville company from infringing on its name and logo and "from



The Eugenia Duke Bridge takes pedestrians over the Reedy River in downtown Greenville. (Photo/Provided)

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