

Are Big Companies Taking Their Trademarks Too Far?



“Corporate Bullies” v. small entities

- Trademarks can be a source designator, but also an alternative means of driving revenue (see Taylor Swift song lyrics)
- Trademark law applies to the large as well as the small. Do not bow to a cease and desist just because it is from a larger entity. Evaluate on the merits, then respond accordingly

In what appears to be another slew of trademark battles, Red Bull energy drinks has challenged the use of the word “ox” in the brand name of a small craft brewery in Virginia. Red Bull filed its opposition with the USPTO against trademark applications from “Old Ox Brewery,” which opened in the northern Virginia suburb of Ashburn in June 2014. Old Ox Brewery is scheduled to produce over 4,000 kegs of beer by December, set for distribution to only a small area of Virginia.

Red Bull argues that the ox used in the brewery’s name is likely to cause customer confusion. It bases this on the fact that both an ox and a bull are bovine animals and are virtually indistinguishable to customers.

The brewery’s president, Chris Burns, was not pleased with Red Bull’s actions. Burns sent a letter to Red Bull, contending that Red Bull was holding the small company “hostage” and that their action would severely limit Old Ox Brewery’s ability to use their brand. Burns’s letter cites to his frustration with the claim of trademark confusion, and Burns makes statements including, “You are a big Red Bully [...] just like that mean kid from grade school pushing everyone down on the playground and giving us post-gym class wedgies. You are giving us one hell of a corporate wedgie. We don’t appreciate it and we sure as hell don’t deserve it.”

This isn’t the first time a large entity has gotten in the way of a small entity.

In 2011, an individual named Bo-Muller Moore filed a trademark for the phrase “Eat More Kale.” The company Chick fil-A, holder of the trademark “Eat mor Chickin,” sent a cease and desist letter to Moore. Moore decided to pursue his trademark, and was granted his trademark in December 2014. This is one example of a trademark-registrant standing up to, and winning against, the “corporate bully.”

“...You are giving us one hell of a corporate wedgie. We don’t appreciate it and we sure as hell don’t deserve it...”

On the one hand, smaller companies and entities can become increasingly frustrated with the “corporate bully” overreaching and overseeing trademark filings. Big companies are quick to send cease and desist letters to small companies, and small companies are typically left with little recourse to pursue the trademark that they may have worked so hard to get. However, on the other hand, big companies file and obtain trademarks to secure their financial rights in a product, image, slogan, or phrase that has earned them significant financial success and recognition.

For example, Taylor Swift has been in the news a lot lately regarding her overzealous filing of numerous trademarks. Recently, she has filed trademark applications for the phrases: “This Sick Beat,” “Nice to Meet You”, “Where You Been?,” and “Party Like It’s 1989,” among others.

Numerous people have questioned whether she is even allowed to trademark such terms. But, according to trademark guidelines, you only need to follow a few rules: (1) your trademark cannot be a generic term, meaning the commonly used name of the product that you are trying to sell; (2) your trademark cannot be something that is entirely descriptive; (3) your trademark generally can be arbitrary, with no connection to the good or service, or fanciful, meaning it has no inherent meaning at all.

Taylor Swift may have something going with trademarking random song lyrics. Due to the rise of streaming music, it is increasingly difficult for artists to make money on their music, which leaves musicians looking for new ways to make money. Trademarking random phrases could be a way for artists to make money in new ways.

Therefore, while trademark cease and desist letters may seem a corporate encumbrance to smaller companies and entities, trademarks provide businesses important monetary revenue. Before filing your trademark, it is important to perform thorough trademark searches, to avoid any potential infringements with a company that may be quick to attack.

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