Why Beyoncé and Jay-Z's "Blue Ivy Carter" Trademark Application Actually Makes Sense

By Dan Nabel on February 17, 2012

Over the last few weeks, many have commented about Beyoncé and Jay-Z's decision to apply for trademark protection for the name of their newborn child — Blue Ivy Carter. Many have observed that the move will protect Blue Ivy and the family from exploitation, while others have accused the celebrity couple of trying to cash in on their own offspring by making themselves "poised to earn even more thanks to their recent move to trademark their baby's name." But before you make up your mind, let's stop and think about just how famous this baby is.

Celebrity Babies

For starters, it's not *just* the unique name that makes Blue Ivy famous. After all, plenty of celebrities have kids with bizarre names: Kal-El Cage (Nicolas Cage), Bear Blu Jarecky (Alicia Silverstone), Pilot Inspektor (Jason Lee), Moxie Crimefighter (Penn Jillette), Fifi Trixibelle (Bob Geldof and Paula Yates), Apple (Gwyneth Paltrow and Chris Martin), Kyd Duchovny (David Duchovny and Tea Leoni), Sage Moonblood (Sylvester Stallone), Prince Michael II a/k/a "Blanket" (Michael Jackson), Dweezil *and* Moon Unit (Frank Zappa) and, of course, Jermajesty Jackson (Jermaine Jackson). But how many people can you name that were truly famous during their infancy? There's Louise Brown — the world's first in-vitro baby. And, of course, Chas Lindbergh (a/k/a the "Lindbergh Baby"). But that's about it.

Blue Ivy, on the other hand, is not just famous for her name and parentage. Within 48 hours of her birth, Jay-Z released the song "Glory," which incorporated Blue Ivy's baby-noises and made her the youngest person ever to appear on a billboard chart. The Huffington Post currently has an entire page dedicated to Blue Ivy, with a tag-line that reads "Some news is so big it needs its own page."

Bearing that in mind, consider that when Blue Ivy was born, Beyoncé and Jay-Z posted pictures of her on the internet — for free. (Recall that photographs of the Brangelina twins, Knox and Vivienne, reportedly fetched more than $10 million).

Reasons for Registering "Blue Ivy Carter" Trademark

There is one obvious reason for Beyoncé and Jay-Z to trademark Blue Ivy's name: to try to stop other people from exploiting it.

Literally two days after Blue Ivy's birth, a fashion designer named Joseph Mbeh tried to trademark "Blue Ivy Carter NYC" for infant clothing use (he reportedly apologized later for his application). A little more than a week later, a New York clothier called CBH By Benton tried to trademark "Blue Ivy Carter Glory IV" for perfume use. Interestingly, the USPTO rejected both applications in about two weeks — which is unusually fast. (Query whether Mr. Mbeh issued his apology to Beyoncé and Jay-Z *before* or *after* he was shut down by the USPTO). Normally, the USPTO takes much, much longer to approve or reject applications. In this case, however, the USPTO issued office actions quickly — either to prevent an onslaught of applications from other opportunists trying to cash in on Blue Ivy Carter's fame, or because someone at the USPTO is just crazy in love with Beyoncé.

Still, you might wonder: doesn't the fact that Beyoncé and Jay-Z are now applying for the "Blue Ivy Carter" mark for dozens of categories of goods prove that they themselves are trying to cash in?

Not necessarily.

"Use in Commerce" Applications vs. "Intent to Use" Applications

Unlike the New York clothier and fashion designer who filed "use in commerce" applications, Beyoncé and Jay-Z and have filed an "intent to use" application. The difference between the two is important. A "use in commerce" application means that the applicant is already using the mark in commerce and is seeking protection. An "intent to use" application means what it sounds like — it means the applicant intends to use the mark at some future time. For an "intent to use" application, the applicant has 6 months to file an "Allegation of Use" to tell the USPTO that the applicant has begun using the mark. And for a small fee of $150 per class of goods/services, the USPTO will extend that time period by 6 months at a time, up to a maximum of 3 years. (I expect this won't be a problem for a couple that may or may not have paid $1.3 million to rent out an entire hospital floor for the birth of their child.)

As a practical matter, Beyoncé and Jay-Z cannot use their "intent to use" application to prevent anyone from using the Blue Ivy Carter mark until they actually start using it. But applying for it discourages others from applying. In other words, Beyoncé and Jay-Z can use their "intent to use" application as a threat to anyone else who starts using the mark, for up to three years.

Well, almost anyone.

Preexisting "Blue Ivy" User Immunity

There are two "Blue Ivy" trademark users who are beyond Beyoncé and Jay-Z's control.

The first is a retail store in Sturgeon Bay Wisconsin which filed its registration for "Blue Ivy" in January 2011, before Beyoncé was even pregnant. So they're off the hook. The second is an Boston-based event planning company called "Blue Ivy" which did not file a trademark application until February 8, 2012, but allegedly began using the mark in commerce in 2009. (And I believe them — they have a cute website…though that picture of Jay-Z and Beyoncé, congratulating the companies "SOUL MATE Couple with Baby Blue Ivy" could be legally problematic for a whole set of other reasons. Maybe a future blog post.)

Thankfully for the Boston-based event planners, the United States is not a "first-to-file" system like many other countries. In other words, what matters most here is when the mark is actually first *used* in commerce — and it does seem the Boston folks used "Blue Ivy" first (at least for their limited categories).

Beyoncé and Jay-Z's Application Is Rejected (For Now)

Before we get ahead of ourselves, let's not forget that the USPTO actually rejected Beyoncé and Jay-Z's application. At least for now. On February 7, 2012 — again, acting extremely fast (maybe someone else as the USPTO who thought Kelly Rowland and Michelle Williams really got screwed in the whole Destiny's Child break-up?) — the USPTO issued an office action letter to Beyoncé's holding company, giving four reasons for rejecting her application. First, some of the categories requested overlapped with the Wisconsin-based company who registered back in January 2011. Second, the "Blue Ivy Carter Glory IV" application, although it has been rejected (for now) is ahead of Beyoncé and Jay-Z's application in line and also has an overlapping category. Third, Beyoncé and Jay-Z need to present evidence that Beyoncé's holding company is sufficiently connected with Blue Ivy Carter, and they haven't done this yet. Fourth, Beyoncé and Jay-Z need give consent on behalf of Blue Ivy Carter in a manner consistent with state law.

None of these hurdles is really a problem, but the fourth one raises an interesting question. Since nobody who applies for "Blue Ivy Carter" will be able to give consent on behalf of baby Blue Ivy (other than Beyoncé and Jay-Z) why are Beyoncé and Jay-Z even registering the mark? Some might say this proves they really are intending to profit from the mark; my view is that it could also be characterized as a "belt and suspenders" approach. In other words, Beyoncé and Jay-Z are probably just doing everything they can do to discourage people from profiting off the fame of their newborn child.

And there's nothing wrong with that.