

Trademark Review

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NY Yankees Establish Rights to a Mark Despite Never Using It

Evil Enterprises sought to register the trademark “Baseballs Evil Empire” for use on apparel. The New York Yankees opposed registration of the mark claiming Applicant’s use of the mark would create a likelihood of confusion with, or alternatively, may disparage the Yankees. The Yankees asserted that the president of the Boston Red Sox coined “The Evil Empire” in 2002 as a derogatory nickname for the Yankees. Since then, the press, media, fans and the public have commonly and extensively referred to the Yankees as the Evil Empire. Moreover, the Yankees and Yankees fans have embraced the “Evil Empire” designation as a badge of honor reflecting the Yankees’ success.

The Trademark Trial and Appeal Board agreed that consumers are likely to believe the Applicant’s apparel products bearing the mark BASEBALLS EVIL EMPIRE are associated with the Yankees and refused registration of the mark. The Board relied upon the numerous news articles referring to the Yankees as the Evil Empire and concluded “the record shows that there is only one Evil Empire in baseball and it is the New York Yankees.” Further, the Board found “the term EVIL EMPIRE, in the world of baseball at a minimum, has become famous in identifying the Yankees for purposes of likelihood of confusion” and thus, is entitled to a broad scope of protection. The Board found the Yankees had a real interest in opposing the registration despite never having used the term “Evil Empire” in connection with any goods or services.

Evil Enterprises argued that the mark is a parody of the Yankees so there could be no likelihood of confusion. Parody is not a defense, however, if the marks are found to be confusingly similar. Because the Board held there is a likelihood of confusion, it rejected the Applicant’s argument that consumers will recognize the mark as a parody. Because the Yankees asserted that it embraced the nickname, the Board rejected the Yankees’ argument that the mark is disparaging.

New York Yankees Partnership v. Evil Enterprises Inc., Opposition No. 91192764 (TTAB Feb. 2013).

Walgreen Is Denied Registration of WAL-ZYR for its Products Equivalent to ZYRTEC

ZYRTEC is a registered trademark for allergy medication. Walgreen sought to register WAL-ZYR for its private-label equivalent of ZYRTEC. In an opposition by the owner of ZYRTEC, Walgreen contended that it intended to convey that the two products are equivalent, not that they are connected. Walgreen submitted a survey supporting that contention, but the Board rejected it as not sufficiently probative. The Board found some of those surveyed showed an awareness of the link between WAL-ZYR and ZYRTEC

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while others assumed WAL-ZYR was a brand name product.

McNeil-PPC Inc. v. Walgreen Co., Opposition No. 91184978 (TTAB Feb. 2013).

The Batmobile Escapes a Motion to Dismiss



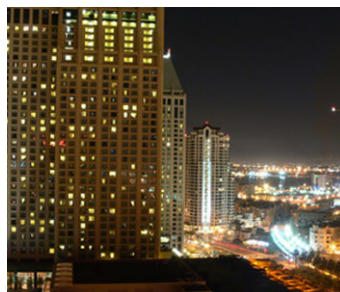
DC Comics Inc. sued a maker of replicas of the Batmobile, claiming the replicas infringe DC's trademarks and copyrights in the Batmobile. On the defendant's motion to dismiss, the court ruled that DC Comics plead sufficient facts to establish that there may be non-functional, artistic elements of the Batmobile protectable by copyright. In general, useful articles such as automobiles are not entitled to copyright protection. There is an exception to that general rule, however, which grants copyright protection to non-functional, artistic elements that can be physically or conceptually separated from the utilitarian aspect of the car. The court found that, drawing all reasonable inferences in favor of DC Comics as the non-moving party, there may be non-functional artistic elements of the Batmobile that may possibly be separated from the utilitarian aspects of the car. The case is ongoing.

DC Comics v. Mark Towle, Case No. 2:11-cv-03934 (C.D. Cal. Feb. 2013).

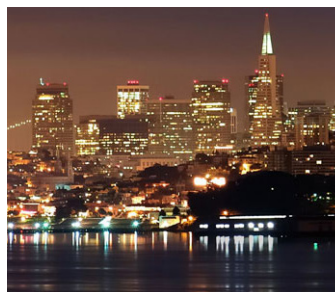
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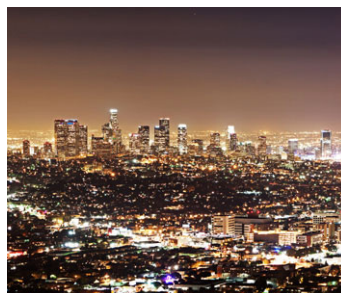
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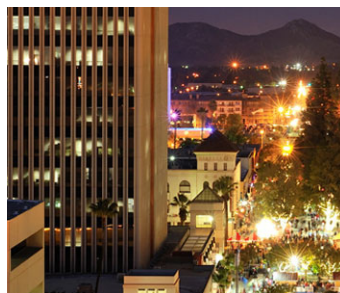
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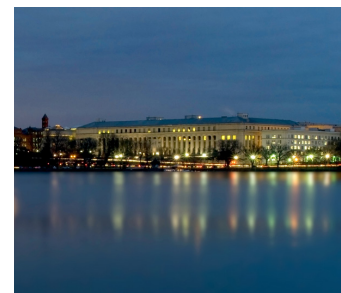
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