



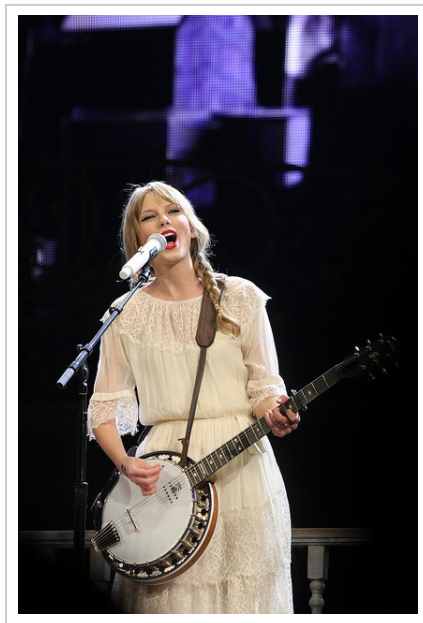
Is Taylor Swift Trying to Use Trademark Protection to Monopolize Common Phrases?

By Guest Blogger on February 6, 2015

You may have heard already that Mistress of All She Surveys Taylor Swift has filed several applications to register trademarks drawn from lyrics to songs in her boffo album *1989*. Among the marks are “This Sick Beat,” “Nice to Meet You. Where You Been?,” “Could Show You Incredible Things,” and “Party Like It’s 1989.” By my count, she filed a total of 57 trademark applications on two days last October, but those only cover six separate marks. More on that below.

These new applications are on top of a number of other trademarks that she already owns, or has applied to register, including “Taylor Swift,” “Taylor Swift Fearless,” “Speak Now,” and “TS.”

The general consensus in the business press seems to be that this is a shrewd move by Ms. Swift, and will ensure that others don’t profit from the popularity of her music. While that may be true, one thing is sure: it’s a good thing to be Taylor Swift’s trademark lawyer. Let’s hope she got a bulk discount on those 57 filings.



Put down the banjo, you tycoon, you’re not fooling anybody.

Other people are freaking out a little bit about these filings, on the misunderstanding that by “trademarking” these terms, she is trying to lock up all use of these terms. But don’t worry – you will still be able to tell your friend that you like “this sick beat” without fear of Taylor’s trademark police kicking down your door.

First of all, she hasn’t registered any of these marks – she has only applied to register them. The applications are all based on a claim that she has an intent to use the marks with particular goods. She won’t get any registrations until the Patent and Trademark Office reviews them and approves them for registration, which in some cases will probably take some negotiation with the examiner. Even assuming they’re approved, they won’t be registered until she submits documents showing that she is actually using them in commerce – typically meaning that she is selling the goods listed in the applications under the mark. I’ll just be that that never happens for a lot of the goods, and she might never sell anything under some of these marks.

Second, even if she gets her registrations, that does not mean that she owns these words lock, stock, and barrel. When you apply to register a trademark, you have to list the specific goods or services that you want the registration to cover. Assuming you eventually get the mark registered, it will normally provide protection against others using that mark, or a similar mark, with either the listed goods or services or others that are similar or related in some way. The idea is to avoid confusion: your registration stakes out a claim, and others can’t confuse consumers by using the same mark, or a similar mark, in a way that is likely to cause confusion about the source of the products.

In the case of “This Sick Beat,” for example, Swift has filed 16 separate applications, covering goods or services ranging from entertainment services, electronic newsletters, contests and sweepstakes services, fan club services, bean bags, Christmas tree decorations, clothing, pot holders, temporary tattoo transfers, guitar accessories, jewelry, ring tones, battery-activated glow sticks, soap, tanning products, and hair care products – to list just a small portion of the products those applications cover.



Photo from earlier trademark application file showing the “Taylor Swift” mark used with Christmas stockings

If Ms. Swift does get her registrations, she would be entitled to shut down others selling clothing bearing “This Sick Beat” as a mark. The same goes for the other marks and all the goods or services listed in the registrations.

That doesn’t mean that people couldn’t use these marks in ways that are expressive and that would not cause confusion about the source of the goods. You could use them as lyrics in your song. Registration would not even necessarily prevent others from selling t-shirts that said “This Sick Beat” on them, if that use was ornamental

rather than serving as an indicator of source. But the truth is, probably nobody in history thought of selling a t-shirt (or a potholder) with the words “This Sick Beat” on it until Ms. Swift came out with the hit “Shake It Off”. So it’s not shockingly unfair that she might be entitled to a cut from sales of items that are desirable because they bear those words and suggest a connection with her or her music.

Fine legal distinctions aside, it’s unlikely that a lot of people are going to want to take on Taylor Swift in a lawsuit. Even if you eventually win, you might have to spend many tens of thousands of dollars to get there – the kind of money that’s probably significant to you, but that Ms. Swift might find rattling around in her couch cushions.

The *New Yorker* has had some fun with this, reporting that Ms. Swift has also applied to appropriate a list of terms including “Happy Birthday,” “This Is Fun,” and “How Did You Get This Number?” <http://www.newyorker.com/humor/daily-shouts/phrases-trademarked-taylor-swift> And it’s funny, but the humor is based on the idea that it’s crazy that she’s trying to monopolize common phrases, which is not really what’s going on. Is Taylor Swift having trademark rights in “Could Show You Incredible Things” for specific goods any crazier than a certain electronics manufacturer having trademark rights in the word “Apple”? And have those rights ever prevented a grocer from selling fruit under that name? No and no. So don’t worry about it.

Another musician, working in a slightly different genre than Ms. Swift, has posted a song called “This Sick Beat TM” on YouTube in what I can only assume is a loving tribute to her gambit. Produced under the name “Peculate,” which is billed as “the progressive metal project of composer and multi-instrumentalist Ben Norton,” the work is consistent with the themes described on Mr. Norton’s website. His aim, he says, is to “strike at the heart of global politics and injustice,” and he speaks ill of corporations that oppress those who refuse to conform to a “consumerist status quo.” Although the trademark applications are in the name of Ms. Swift personally (not a corporation), I would hazard a guess that he’s not wild about her, either. But I think his evident outrage is based on a misunderstanding about exactly what’s happening. You can see and hear his work at:

Not quite what you expected, is it?

*The lawyers at Trademarkology provide trademark registration services backed by the experience and service of one of the nation’s oldest law firms. Click **here** to contact us.*

Photo Credits: Taylor Swift with banjo, by Eva Rinaldi at

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