DONALD J. TRUMP STRIKES AGAIN . . . AND AGAIN . . . AND AGAIN!

Posted on September 20, 2024 by Michael A. Kahn

Tags: Celine Dion, copyright infringement, Donald J. Trump, Hannibal Lector, Neil Young, Tom Petty, trademark infringement

As I have written before, Donald J. Trump has proven over and over to be the gift that goes on giving to copyright and trademark lawyers. Last time around it was the battle over the application to register the trademark for TRUMP TOO SMALL—which ended with a Supreme Court decision blocking the registration but nevertheless allowing the use of that tagline—the origins of which, as I explained, date back to Trump's irate response to Marco Rubio's droll suggestion during a 2016 presidential debate that there was a correlation between the small size of Donald's hands and another part of his anatomy.

Ah, but nowhere in the realm of intellectual property has the Donald been more of a multiple violator than the realm of copyright, and in particular, music copyrights. As I have written in a prior post, he has outraged musicians, including Neil Young, whose copyrighted song "Rockin' in the Free World" was blaring on all speakers as Trump rode down the Trump Tower gold escalator in June of 2015 to launch his campaign for president.. Indeed, his copyright violations have been so blatant and abundant that Wikipedia now has a page listing all the musicians (at last count, 35) who have

The choice of a lawyer is an important decision and should not be based solely upon advertisements.

objected to Trump's use of their songs in his campaign rallies, advertisements, and video—a group of artists that ranges from ABBA and Adele to Tom Petty and the Village People. Indeed, for man whose fixation on the fictional serial killer Hannibal Lector has baffled the media, it seems only appropriate to label him a serial infringer.

Perhaps the most bizarre recent infringement was the illegal use of a video of Celine Dion performing her hit "My Heart Will Go On," which was broadcast at a Trump campaign rally earlier this summer in Bozeman, Montana. And what made it such a bizarre choice for a campaign rally? The song was used as the theme of the movie *The Titanic*. As her management team posted on social media: "In no way is this use authorized, and Celine Dion does not endorse this or any similar use…And really, THAT song?"

And now? The Donald has suffered another pair of copyright infringement smackdowns. First up was his unauthorized use of Eddy Grant's "Electric Avenue" song in a truly nasty video from his 2020 campaign. On September 13 of this year, Judge John G. Koeltl of the U.S. District Court for the Southern District of New York entered summary judgment in favor of Mr. Grant and dismissed Trump's "fair use" defense. In doing so, the Judge carefully evaluated each of the four "fair use" factors and found that Trump failed on all four. With liability established, the case will now focus on determining damages.

And earlier this summer, the family of Isaac Hayes Enterprises announced that they are suing the Donald for 134 counts of copyright infringement for his unauthorized use of the song "Hold On (I'm Coming)" at campaign rallies from 2022 to 2024.

But in fairness to Trump, although he is a serial infringer of epic proportions, he is not the only political candidate to anger an artist for using a song at a campaign rally. Even Barack Obama received an objection from Sam Moore of Sam & Dave for use of their cover of "Hold On (I'm Coming)" at a 2008 campaign event. You can understand the concerns of a songwriter, since playing his or her song at a campaign rally creates the impression that the songwriter supports—indeed, endorses—that candidate.

So while we IP lawyers acknowledge this outrageous Trump gift that goes on giving, my hope—perhaps naïve—is that this latest explosion of copyright infringement lawsuits, threats, and objections will remind politicians that artists have the right to control how their creative works are used, especially in the context of election campaigns.

The choice of a lawyer is an important decision and should not be based solely upon advertisements.