WHO'S A TRADEMARK KNUCKLEHEAD NOW? FROM COVFEFE TO COVID-19 TO AUNT JEMIMA

Posted on August 4, 2020 by Michael A. Kahn

Tags: Michael A. Kahn, Trademark Tales

These have been strange times for all of us, and uniquely strange to those toiling in the field of trademark law. And for us it's getting stranger every day.

Cue Frank Sinatra's "Send in the Clowns.

Trademark Tales: Covfefe® Really? It began in 2017 with that mysterious 7-letter typo in one of Donald Trump's wee-hours tweets grousing about "fake news"—a typo that triggered the filing of 42 applications to register trademark rights in COVFEFE, a weird development that I covered in a blog post.

From COVFEFE to COVID: The Knucklehead Trademark Saga Continues I revisited that weirdness in March of this year **as** the COVID-19 pandemic began upending our daily lives and dominating cable news. Back then I naively expressed my astonishment and exasperation over the opportunists who had jumped on the chance to register trademarks in the word COVID.

What I hadn't yet realized is that trademark applications have become first cousins of social memes—the listicles of intellectual property. Back in March there were eighteen COVID trademark applications, which sure seemed a lot for a grim pandemic. Guess what?

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

There are now **358** registration applications, including such oddballs as:

- COVID NINJA
- CAN'T TOUCH THIS – COVID-19
- COVID COUCH POTATO;
- COVID CONDOM (for "antimicrobial protective sleeves and covers for coffee pots and other products having handles").

There is even one application with a nod to our President's typo: COVID-19 TAKES DOWN COVFEFE (Serial No. 88849328).

Are We Fuct? The Supreme Court to Answer this Trademark Question And thanks to the Supreme Court's First Amendment decision striking down the statutory ban on trademark registrations for words that are "immoral" or "scandalous" there are ***two*** applications to register the trademark in SCIENCE THE SHIT OUT OF COVID (Serial Nos. 88887594 and 88933198).

"Trademark" LIVES MATTER

But, as I came to realize, focusing on COVID applications misses the bigger picture here. For example, there are now over two dozen applications to register versions of BLACK LIVES MATTER, along with many more to register other LIVES MATTER trademarks, including:

- VETERANS LIVES MATTER
- REPUBLICAN LIVES MATTER
- BLUE LIVES MATTER
- YOUR LIVES MATTER
- DOGGIE LIVES MATTER
- SATANIC LIVES MATTER

But the most powerful trademark story of 2020 is not the COVID knuckleheads or the various LIVES MATTER applications but a profound cultural reawakening that has tarred and feathered some of our oldest and most powerful brands.

> *Indeed, the trademark world has experienced its equivalent of the removal of statues of Confederate generals, Christopher Columbus, and other cultural icons.*

Cultural Reawakening of Iconic Brands

All four trademarks and logos had been criticized for decades as offensive and disparaging racial stereotypes and slurs. The Redskins had fought and prevailed in several major litigation efforts by groups of native Americans and others seeking to cancel the federal registration. But heading into 2020, their owners were still defending all four trademarks, and no one more adamantly than the owner of the Redskins.

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

The Impact of Social Justice on Iconic Trademarks

But then George Floyd was killed, and Black Lives Matter protests erupted around the country. And what happened to those four iconic trademarks?

- Quaker Oats (owner of the AUNT JEMIMA registration) announced it will change the name and the image for its pancake and syrup products.
- As for UNCLE BEN'S, the owner of that brand, Mars Inc., announced that it will "evolve" its visual brand identity in response to those who believe that its logo and name perpetuate racial stereotypes.
- Land 'O Lakes, Inc. quietly removed the Native American woman from their logo, although to their credit they apparently did so in February, before the protest movement erupted.
- The Washington team has announced it is abandoning its REDSKINS trademark.

These are genuinely inspiring developments that underscore the powerful cultural influence of expression protected by the First Amendment.

But before we take a victory lap around the U.S. Patent and Trademark Office, we must remind ourselves that just as antibiotics cannot rid the body of all pathogens, a powerful wave of social consciousness cannot rid us of all trademark knuckleheads. And thus, I predict that once the AUNT JEMIMA, UNCLE BEN'S and REDSKINS trademarks are formally abandoned by their current owners, we will see new applications to register those same trademarks.

So, stay tuned.

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