

Don't Miss a Beat – Misunderstanding Your Intellectual Property Rights Could Cost You Your Protections

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You have obtained federal trademark protection, so you should feel that all of your intellectual property rights are protected, right? What if you have not obtained the appropriate intellectual property protections? In fact, many people misunderstand the scope of the intellectual property rights they possess and it has ended up costing them significantly. A recent Ninth Circuit case illustrates this precise dilemma, and what's at stake by not clearly understanding and differentiating between different aspects of intellectual property protection.

BACKGROUND ON THE CASE

In *Slep-Tone Entertainment Corp. v. Wired for Sound Karaoke and DJ Services, LLC*, the Ninth Circuit reinforced the principle that the Lanham Act (the "Trademark Act") is limited to protecting consumer confusion over the origin of an actual good and cannot be used to protect content. The Plaintiff, a producer of karaoke music tracks, alleged trademark infringement and unfair competition, among other things, against the owner and operator of a karaoke business. However, in actuality, the Plaintiff was improperly seeking copyright protections under the guise of trademark law – causes of action to which the Ninth Circuit identified as a "species of mutant copyright."

To read the entire *Slep-Tone* case, [click here](#).

KEY STEPS TO ACT ON NOW

Yes, the Plaintiff in *Slep-Tone* had a valid trademark. However, it is apparent that the Plaintiff did not have a clear understanding of the rights actually possessed. Whether you are a big or a little fish, it is imperative that you remember these three simple steps when seeking intellectual property protections:

1. Have a clear understanding of what exactly you want to protect.

When deciding on intellectual property rights, it is important to determine the type of protections that you are seeking. This may sound simple, but your objectives may likely blend together. For example, imagine you are a small business owner who has just designed a logo for your business. Initially, you may identify that you want this logo to serve as your trademark and thus you want that sort of protection. However, this logo could also be viewed as a "work of authorship" and could also qualify for copyright protection. Recognizing your intellectual property for what it truly is, rather than simply a "trademark," will allow you to expand your intellectual property protections as broadly as necessary.



2. Understand the different areas of intellectual property protection.

As clearly stated by the Ninth Circuit in *Slep-Tone*, a “good” for the purposes of trademark law is, “the ‘tangible product sold in the marketplace’ rather than the creative content of that product.” There is a clear difference here and the courts have shown dedication to policing and enforcing these parameters.

The Lanham Act is the primary federal statute that governs trademarks, service marks, and unfair competition and provides protections against unauthorized usage of a trademark in the stream of commerce. Conversely, the Copyright Act protects original works of authorship, fixed in any tangible medium of expression. Works of authorship can include literature, music, dramatic works, pictures, art, sound recordings, movies, choreographic works, and architecture.

Visit the United States Patent and Trademark Office [here](#) to learn more about trademark protections. Likewise, the Library of Congress website offers resources to learn more about copyright law.

3. Understand how to properly enforce your intellectual property rights.

Even though the Ninth Circuit in *Slep-Tone* acknowledged that there may have been unauthorized use of the Plaintiff’s tracks, it refused to extend relief due to Plaintiff’s failure to enforce the appropriate rights. In this case, the Plaintiff may have had a strong cause of action for copyright infringement, instead of the protections of a copyright via a trademark infringement cause of action. If you feel that your intellectual property rights have been violated, it is crucial to identify and determine the appropriate manner of enforcing your intellectual property rights through the proper administrative and litigation channels.

As always, it is important to consult with an attorney for a more detailed analysis on trademark and copyright law and the applicability of these laws to your intellectual property rights. When you come to the table with these three steps in mind, you surely won’t miss a beat!

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