

Intellectual Property

By Reg P. Wydeven

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If you just invented the first automated, self-cleaning cat litter box, you would definitely want to stop other folks from getting rich off of stealing your idea. Thankfully, the law provides protection for original ideas, inventions, trade secrets, processes, programs, data, formulas or works of art. Commonly called intellectual property, these concepts are protected in the forms of patents, trade or service marks, or copyrights.

Patents typically protect unique machinery, processes or formulas, like your self-cleaning litter box or New Coke. Trade and service marks generally protect marketing ideas, like McDonalds golden arches or Maxwell House's "good to the last drop" slogan. Copyrights protect creative works like books, movies or corny newspaper columns.

If someone attempts to steal a protected idea or work, the person whose intellectual property rights were infringed upon can seek to enforce certain legal remedies. For example, if someone stole the patented recipe for Krispy Kreme doughnuts and tried to sell them as their own, Krispy Kreme could sue for injunctive relief, forcing the forger to stop making the doughnuts. They could also sue for monetary damages.

That's exactly what The Hershey Co. did when a California company named its clothing line using a homonym for one of Hershey's chocolate candies. In 2004, Kiersten Wall and Stephanie Schulte co-founded Milkdudz, a cleverly named company that designs clothing specifically for nursing mothers.

In a complaint filed with the U.S. Patent and Trademark Office, Hershey claims the name of the clothing line is confusingly similar to the name of Milk Duds, its chocolate-covered caramel balls. The complaint goes on to state that because Hershey has a federally registered trademark, Milkdudz should be precluded from using its name because it is "trying to capitalize on the name recognition of Milk Duds to avoid having to build up its own brand."

Wall and Schuelte claim Hershey's trademark protection extends only to candy and not clothing because they believe consumers would never confuse Milkdudz clothing with Hershey's Milk Duds candy.

Even people can be intellectual property. For example, the heirs of rock'n'roll legend Jerry Garcia sued Moe's Southwest Grill, a burrito franchise based in Atlanta, for selling the "Alfredo Garcia" fajita without permission. In addition, to market the taco, Moe's altered the lyrics from the Grateful Dead song, "Casey Jones," to read "Trouble ahead, trouble behind, just have my taco ready in time."

The lawsuit seeks injunctive relief to preclude Moe's from using Garcia's name or likeness and it also calls for unspecified damages because Moe's has reaped "ill-gotten benefits" from using Garcia's name without permission.

Meanwhile, Beethoven would be rolling over in his grave to learn that karaoke companies are stealing rock legend Chuck Berry's songs. He has sued three top distributors in the multi-million-dollar-a-year industry for selling sing-along versions of his popular songs without obtaining licenses or paying him royalties.

Berry, along with several other copyright holders of lesser-known tunes, filed suit in the U.S. District Court in Los Angeles. Unlike most recording stars of his era, Berry, through his Isalee Music Co., owns all of the publishing rights to his song library. If Berry prevails, he could be awarded several hundred thousand dollars in uncollected royalties for each of his songs that was used without his permission as the holder of the copyrights.

One thing is for certain: Berry definitely hopes the verdict in this case will "B. Goode."

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