

Trademark Infringement! Duh!

By Reg P. Wydeven
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Last week I wrote about the legal fallout from Charlie Sheen's recent antics. The legal issues I wrote about were contractual in nature, namely Warner Bros.' allegations that Charlie breached his contract because of his drug abuse and Charlie's assertion that Warner Bros. owes him for the remaining unproduced episodes under his contract.

Charlie's rants didn't result in only contractual problems. Ironically, his random thoughts also gave rise to intellectual property law issues as well.

Since being released from the hospital after a suspected drug overdose in January and completion of his self-directed, in-home rehab, Charlie has uttered some epic phrases in interviews and on webcasts. Sheen has been willing to talk to any media outlet looking for a forum to advance his war of words with the producers of his hit TV show 'Two and a Half Men.'

I have several favorites, such as, "I am on a drug. It's called Charlie Sheen. It's not available because if you try it you will die. Your face will melt off and your children will weep over your exploded body." I also love, "I'm a high priest Vatican assassin warlock." And I'll never forget, "The only thing I'm addicted to is winning."

Since spewing these nuggets, dozens of folks have registered trademarks based on Sheen's catchphrases with the U.S. Trademark Office. In the past few weeks, registrants have trademarked, "Winning!," "Duh! Winning!," "Winning," "World Wide Winning Connections," "Friendship, Who's Winning?" and "Bi-Winning."

A video website that keeps track of new Charlie Sheen appearances has registered "Tiger Blood TV." A Florida-based toy manufacturer has registered the "Magic Charlie Ball." Another company registered "Adonis DNA" for a line of dietary and nutritional supplements.

Interestingly, Charlie is planning a multiple-city performing tour. At the shows, he intends to sell t-shirts, mugs and other merchandise brandished with his slogans. To sell the products, Sheen has enlisted FEA Merchandising, a subsidiary of Live Nation Entertainment, the self-proclaimed "world's leading live entertainment and eCommerce company" that happens to own Ticketmaster.

Even though other people now own the trademarks to Sheen's mottos, FEA has been busy sending out cease-and-desist letters and takedown notices to unauthorized competitors trying to jump on the Charlie Sheen gravy train. While some of these competitors may hold trademarks to the slogans, FEA is operating under the theory that they are violating Sheen's publicity rights.

For example, Kate Durkin received such a letter after the organization she co-founded, Unfollow Charlie, began selling t-shirts bearing its name on Zazzle.com, an online retailer that allows users to upload images and create their own merchandise. Durkin and others started the group in response to being disgusted at all the publicity Sheen received for his antics. She received an email notifying her that their design would be taken down as the result of infringement. The email stated:

"Unfortunately, your product was removed because it featured a design that does not meet Zazzle Acceptable Content Guidelines. Specifically, your product contained content that violates Charlie Sheen's rights of celebrity/publicity. Charlie Sheen's name and likeness are protected by rights of celebrity/publicity and may not be used on Zazzle products without permission."

While not common, FEA's strategy is not new. Nearly thirty years ago Johnny Carson successfully sued a toilet manufacturer that attempted to sell portable toilets bearing the phrase, "Here's Johnny," capitalizing on the use of his 'Tonight Show' introduction.

Since he got fired from 'Two and a Half Men,' maybe Charlie should try to get on 'Law and Order.' After all, he's going to be spending an awful lot of time in court.

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