



The 10 Most Talked About IP Battles This Year

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Table of Contents

- World Cup Fans Carded For Trademark Infringement **2**
- Led Zeppelin Faces Copyright Challenge Over Stairway to Heaven **4**
- Godzilla Celebrates 60 Years of Brand Protection **6**
- Baseball Shuts Down Podcasts Over Trademark Infringement **8**
- James Franco Facing Copyright Lawsuit Over Bukowski Biopic **10**
- Rival Alleges Intellectual Property Theft By Oculus Rift Developers **12**
- Quentin Tarantino Claims Copyright Infringement in Script Leak Case **14**
- Ferrari in Copyright Dispute Over Facebook Page **16**
- Patent Troll Takes Aim at Podcasts **18**
- Interns Tell Taco Bell Doritos Locos Tacos “Nacho” Idea **20**



World Cup Fans Carded for Trademark Infringement

Every four years, people around the globe gather in front of their televisions to watch the World Cup. National pride swells, and old rivalries are renewed (with the aggression hopefully limited to the pitch). Countries like England, Italy, and Mexico take a pause from being world leaders and become the Three Lions, Gli Azzurri, and El Tri (respectively) for four weeks. Fans relive memories of head-butts and Hand(s) of God, and tell tales of bygone heroes with names like Pele, Eusebio, Beckenbauer, and Cruyff. It wouldn't come as any surprise to find that fans around the world might be posting pictures of flags or even the World Cup logo to social media in their fervor. But fans doing so may soon find themselves in the crosshairs of soccer's governing body, and dealing with the repercussions of trademark infringement.

FIFA has asked Twitter to send takedown notices to over 100 users who have used the logo of the 2014 World Cup as their profile's avatar image. Twitter policy states that in instances when there is a "clear intent to mislead others through the unauthorized use of a trademark," they will suspend the account and notify the user. However, in instances where Twitter determines that the user account "appears to be confusing users, but is not purposefully passing itself off as the trademarked good or service," Twitter will allow the user the chance to clear up any potential confusion. While it seems likely these offenders are simply enthusiastic fans, FIFA has proven itself zealous in defending its brand, even in its commercial partnerships.

In its guidelines on usage of its official World Cup marks, FIFA lays out strict, specific rules on how the logo and related images may be used and by whom. Even with its considerable funds, FIFA relies on partnering with corporate sponsors to defray the costs associated with each World Cup. In exchange, these companies are given the right to use the logo in advertising, as well as the exclusivity of being able to market themselves as a official partner of the FIFA World Cup. Companies that either illicitly use World Cup branding without permission, or imply an association with FIFA and the World Cup that doesn't exist devalue the exclusivity held by official partners and sponsors and damage FIFA's ability to sell such partnerships if left unchecked. More than just protecting the World Cup logo, FIFA also has protection on the tournament's official mascot (Fuleco the Armadillo), official slogan ("All in one rhythm™"), as well as a slew of terms related to the event, including "2014 FIFA World Cup Brazil," "2014 FIFA World Cup," "Brazil 2014," and "Soccer World Cup," to name a few.

There are of course exceptions to these restrictions. News media are allowed to use the official marks for information and editorial purposes, as well as publicize the match schedule provided it does not contain any unauthorized commercial branding. Also, any business names or merchandise featuring general soccer terms, national flags, or generic relation to Brazil do not create an infringement. And they're not the only big sporting event that goes to such lengths to protect their trademarks. So fans looking to enjoy the festivities should take heed if they're thinking of using FIFA World Cup branding in any way, lest they be dealt with in a severe fashion.





Led Zeppelin Faces Copyright Challenge Over Stairway to Heaven

Led Zeppelin is considered to be one of the most iconic bands of all time, selling millions of albums and influencing a generation of fans and fellow musicians alike. Growing up, there wasn't a year that went by without my father finding occasion to tell the tale of racing to the record store to buy Physical Graffiti in 1975, or seeing the "mighty Zep" at the Pontiac Silverdome on their legendary 1977 tour. Their most-famous song, "Stairway to Heaven," has become a staple of both rock radio and guitar stores. But a comparison of "Stairway" to another work by Led Zeppelin's one-time tourmates has some questioning if indeed the song remains the same.

Representatives of the band Spirit plan to file a copyright lawsuit to try and block the upcoming re-release of the Led Zeppelin album that features "Stairway to Heaven." The suit is being filed by the trust of Randy California, the former Spirit member who passed away in 1997. California wrote "Taurus," the song from which Led Zeppelin is alleged to have lifted much of the opening chord progression. The song appeared on the band's eponymous debut album in 1968, the year before Spirit began performing with Led Zeppelin regularly. According to Led Zeppelin lore, the group's most famous song was crafted in a Welsh cottage named Bron-Yr-Aur in 1970 by guitarist Jimmy Page, though accounts from members of Spirit cast doubt upon this version of events. In a Bloomberg Businessweek story, Spirit's bassist claims that Led Zeppelin first heard the song when they opened for Spirit at a concert in Denver in December 1968, and regularly thereafter when the groups performed together in 1969 and 1970. "Stairway to Heaven" appeared on Led Zeppelin's untitled 1971 album, commonly referred to as *Led Zeppelin IV*. To date, the album has sold over 23 million copies, and "Stairway to Heaven" is estimated to have generated a staggering \$562 million in revenue for the band.

Unfortunately, or perhaps unsurprisingly, this is not the first instance of Led Zeppelin being accused of misappropriating the work of another artist, given how steeped the group was in the American blues. The group settled with the publisher of Howlin' Wolf Burnett over the similarities between their "The Lemon Song" and Burnett's "Killing Floor." They also settled a suit brought by bluesman Willie Dixon in 1987 over similarities between his "You Need Love" and the band's "Whole Lotta Love," as well as one brought by Anne Bredon, the writer of the original "Babe I'm Gonna Leave You," in the mid-1980s. Most recently, Page and his publishing companies were sued by Jake Holmes over a Led Zeppelin version of his song "Dazed and Confused," with the case being dismissed in November 2011. And while the group may be facing their greatest legal challenge to date, they will no doubt retain their status as titans of rock and roll with a devoted following.





Godzilla Celebrates 60 Years of Brand Protection

Since his beginnings in 1954's *Gojira*, Godzilla has become one of film's longest-lived and most loved monsters (to the extent that monsters can be loved). In the 60 years since his inception, he has managed to withstand attacks from the world's military might, battles with fellow monsters, and poorly conceived remakes. He has proven resilient enough to find his way back to the big screen this summer to spark the imaginations of yet another generation. But his greatest nemesis over the decades has not been King Ghidorah or Mechagodzilla, but rather copyright and trademark violators.

Godzilla's owners have never been shy about taking legal action to defend their lucrative brand. Since the early 1990's, Toho, Ltd., the Tokyo-based proprietors of the Godzilla property, have filed 32 separate copyright and trademark lawsuits to defend the legendary lizard from those who would have misused his name and likeness. American Honda's float in the 1991 Rose Parade sparked Toho's first suit; their entry featured Godzilla in a top hat and colorful tuxedo jacket, a combination that, while classy, also infringed upon Toho's intellectual property. Honda attempted to deny the accusation in the year-long court case that followed, claiming that their creature wasn't Godzilla but rather a dinosaur, despite their advertising and internal communication referring to the character by name. Indeed, many defendants in suits to follow tried to claim their depictions featured a dinosaur. Given that these depictions often featured a creature with spikes running along its spine set amongst a cityscape, that defense usually proved to be a flimsy as Tokyo's skyline.

Among others who have tried to misappropriate the Godzilla brand is a wine called Cabzilla; a rapper named Pharoahe Monch who misused Godzilla's theme music in addition to having a dog toy called Tuffzilla; the original "Sim City" computer game; Honda (again); and Subway. Currently, the Godzilla brand is embroiled in a suit against a Louisiana brewer that produced a beer called Mechahopzilla, featuring a giant robot lizard on the can that perhaps too closely resembles Godzilla's mechanized rival Mechagodzilla. The brewer is attempting to use the same defense that won Sears Roebuck a decision when sued by Toho in 1981 over their "Bagzilla" trash bags, claiming the use was humorous parody.

As the Godzilla franchise once again ascends, Toho and its legal team will need to remain vigilant in brand protection efforts of their highly-profitable monster from those who might try to capitalize on the creature's most recent star turn. Fans can rest easier knowing that the big guy's future is secure. Now that's news worth dancing to.



Baseball Shuts Down Podcasts Over Trademark Infringement

One of the thrills of following baseball in the modern day is the ability to follow your team's every move, day in and day out, through a variety of media. But for a number of fans, their options have just decreased by one. Major League Baseball Advanced Media (MLBAM) has requested that iTunes remove a number of baseball-related podcasts from iTunes, a request which was fulfilled with all the speed and vigor of a Yasiel Puig bat flip.

MLBAM cited trademark infringement as the reason for the move in the letter it sent to Apple, which has subsequently been published by NBC Sports' Hardball Talk:

"As we have done in the past, yesterday we notified Apple about certain podcasts on the iTunes Store whose titles and/or thumbnails include infringing uses of trademarks of Major League Baseball and certain Clubs. And, as we have done in the past, we asked Apple to have these trademarks removed from the podcast titles and thumbnails. Although we did not ask for or seek to have any podcast removed from the Store, it has come to our attention that Apple removed them. Given our many years of experience in notifying Apple about trademark issues on the Store, we trust that removing the podcasts was an oversight, and ask that you please look into this matter as soon as possible.

Thank you for your cooperation."

Among the offending titles are Twins podcasts "Gleeman and the Geek" and "Talk to Contact," Pirates podcast "Pirates Prospects," Mets podcast "Mets Musings," Rangers podcast "Rangers Report in Arlington," and several others. What makes the matter confusing and rather arbitrary is the fact that there remain numerous team-related and fan-produced podcasts still readily available in the iTunes store, none of which would seem to have any more legal right to trademark usage than the podcasts that were initially removed.

It is worth noting that MLB did not take the step of sending a letter or other communication to these podcasts notifying them of the infringement before going to Apple, a seemingly heavy-handed move from a business that frequently bemoans its loss of fans. And given the time and effort necessary to devote oneself not only to following one's favorite team through the lengthy baseball season but to recording a podcast devoted to that team, MLB would seem to be pursuing action against its most fervent fans and customers. While perhaps undertaken with the best of intentions in protecting its brand, it would seem to be another move that will ultimately alienate fans from a sport that is a master in that arena.





James Franco Facing Copyright Lawsuit Over Bukowski Biopic

James Franco is an actor, director, writer, scholar, and paramour of body pillows. But may he soon add “litigant in a copyright infringement case” to his resume?

A London-based screenwriter, Cyril Humphris, is bringing suit against the Flyboys star and his production company for his work on a biographical film of the author Charles Bukowski, entitled Bukowski. Humphris claims that Franco’s film infringes upon Bukowski’s semi-autobiographical novel Ham and Rye, which Humphris contends he owns the film rights to. In the lawsuit, Humphris says that he and Franco entered into an agreement in 2009 to adapt the novel into a film, but that Franco’s rights to the project expired in November 2010. Humphris asserts that Franco has continued with his work on the project despite having the right lapse, and that Bukowski

“borrows the Novel’s themes of childhood loneliness; adolescent self-consciousness; the failures, hypocrisy, and cruelty of adults...the Film incorporates entire scenes, including substantially their dialogue, from the Novel.”

When he learned of the project, Humphris reached out to Franco over email to express his concern, and to try and get a copy of the script; he didn’t hear back from Franco but was eventually contacted by Franco’s attorneys. The lawsuit claims that beginning in March 2013 Franco made a conscious effort to distance his film from the novel, claiming that his work wasn’t based upon Ham and Rye but rather Bukowski’s childhood in Los Angeles. Humphris learned last December that Franco has completed work on the film and that he and his production company, Rabbit Bandini, were seeking distribution. Humphris is seeking an injunction and \$150,000 in damages.

Ownership of film rights to an autobiography does not necessarily give one life-story rights to the author, as The Hollywood Reporter’s Eriq Gardner writes:

“And it’s possible to do a biography without infringement, as facts can’t be copyrighted. But the arrangement of facts in a creative manner can be protected, and so Humphris is coming to court with an interesting claim that he is essentially entitled to Bukowski’s expression of childhood and any imaginative flourishes within.”

It is as yet undetermined whether legal proceedings will delay any potential sequel to the 2006 film Annapolis.





Rival Alleges Intellectual Property Theft By Oculus Rift Developers

A virtual-reality hardware firm might soon find itself in an all-too-real courtroom after accusations of intellectual property theft.

Oculus, best known for its Oculus Rift virtual reality headset, has come under fire from a rival who claims the company stole the technology for the device from them. ZeniMax Media has sent letters regarding the technology in dispute to both Oculus as well as Facebook, which purchased Oculus earlier this year for \$2 billion. ZeniMax is the parent company of several well-known entities in the gaming industry, most notably Bethesda Studios, best known for the Elder Scrolls series. Also under the ZeniMax umbrella is id Software, the developers of the Doom games and formerly the home of current Oculus CTO John Carmack. Carmack spent time developing virtual reality technology while employed by ZeniMax, including projects developed in conjunction with Oculus. It is ZeniMax's assertion that Mr. Carmack took intellectual property developed during his time at the company with him to his new employer.

In its statement, ZeniMax claims that Oculus co-founder Palmer Luckey acknowledged in writing that the intellectual property developed by Carmack during his time with ZeniMax belonged to the company, and that said property would not be disclosed to any third parties without ZeniMax's consent. Both sides had previously tried to reach an agreement whereby ZeniMax would receive equity ownership in Oculus as compensation for its technology, but the negotiations were ultimately unsuccessful.

Oculus has committed to fighting these charges, stating that they will "vigorously defend Oculus and its investors to the fullest extent." Mr. Carmack has taken to his own defense as well, stating on Twitter:

"No work I have ever done has been patented. Zenimax owns the code that I wrote, but they don't own VR."

It is unclear whether Facebook was aware of these claims before they began their purchase of Oculus earlier this year, or whether these developments will impede the pending acquisition. With technology moving ever forward, there are sure to be even more issues like this in the future, making responsible intellectual property management a vital skill for the nerds of tomorrow.





Quentin Tarantino Claims Copyright Infringement in Script Leak Case

Renowned director and profanity enthusiast Quentin Tarantino had his lawsuit against Gawker Media over a script leak dismissed Tuesday by a California federal judge. In his suit, Tarantino claimed contributory copyright infringement on the part of Gawker's Defamer website for sharing a link to a leaked copy of his script for what was to be his latest project, a Western entitled *The Hateful Eight*. In its post, Defamer offers a link to the script on a file-uploading site and encourages readers to "Enjoy!" The title of the article is the rather direct "Here Is the Leaked Quentin Tarantino Hateful Eight Script". While Gawker is not cited as the original source of the script leak, Tarantino claims that the site contributed to the infringement and hurt the market value of the script by making the link available to a larger audience. In his complaint the director claimed Gawker "has made a business of predatory journalism." Gawker has taken the stance that it linked to the script only in its reporting of Tarantino abandoning the project in light of the script leak, and that including the link falls within fair use as part of their reporting.

In his ruling dismissing the case, California Judge John Walter stated that Tarantino "failed to adequately plead facts establishing direct infringement by a third party or facts that would demonstrate [Gawker] either caused, induced, or materially contributed to the alleged direct infringement of those third party infringers." So while Gawker did in fact provide the link, Tarantino and his attorneys were unable to substantiate that specific individuals clicked that link and downloaded the script, and therefore failed to establish the necessary grounds for a valid claim. The ruling does allow for Tarantino to amend his claim and re-file by May 1.

As would be expected, Tarantino has not taken the matter lying down. He staged a reading of his script, using actors he had previously worked with, and has stated that the movie might still move forward with a reworked script. For the time being, Gawker can rest easy and hope the matter is settled through the court system and not through extralegal agents.



Ferrari in Copyright Dispute Over Facebook Page

A quick search through Facebook will turn up fan pages devoted to any number of topics: bands, films, Nicolas Cage's face on things. But one young Swiss fan's tribute page to his favorite car manufacturer has landed him in a dispute with the company.

Sammy Wasem created a Facebook page devoted to Italian car manufacturer Ferrari in 2008 at the age of 15. The page had over 500,000 fans in 2009 when Wasem was first contacted by Ferrari. The company congratulated him on his success, but informed him that due to legal issues, they would have to take over administrative control of the site. Ferrari offered to allow Wasem to continue his work on the site with proper oversight, which Wasem did until he filed suit against the company in 2013.

In his suit, Wasem is claiming copyright infringement due to losing control of his page. He alleges that Ferrari appointed managers for the page without consulting the Wasem family, and that the Wasems continued work on the page from 2009-2013 without ever receiving terms in writing of their agreement with Ferrari. Wasem claims that he is owed for over 5,500 hours of unpaid work on the site, and is seeking damages of 10 million Swiss francs (\$11.3 million). Ferrari is countersuing the family, claiming they used the company's trademark to sell non-Ferrari merchandise and on invitations for Mr. Wasem's 18th birthday party.

In previous infringement cases involving social media, companies have chosen to co-opt the alleged offender into the marketing process rather than risk the negative publicity of suing a fan of their product. And while social media is a recent development as far as product marketing is concerned, companies that fail to account for such possibilities do so at their own risk. It remains to be seen what lessons Ferrari might learn from this experience. As for Mr. Wasem, he might be best served to stick with Alfa Romeo fan pages next time.





Patent Troll Takes Aim at Podcasts

Chances are you've listened to a podcast before, whether to keep up with the news, pass the time at the gym, or get mediocre fantasy football advice. But a lawsuit from a "patent troll" could threaten to bring an end to podcasting as we know it.

A group known as Personal Audio filed a lawsuit against podcast host Adam Carolla and his ACE Broadcasting Network. Carolla's "The Adam Carolla Show" is one of the most-downloaded shows in iTunes and an easy target for those looking to cash in on a broad patent, as Personal Audio is alleged to be doing. The patent the company holds broadly covers episodic content that can be downloaded from a specific URL and retrieved and stored by client software; basically, the definition of what a podcast is. Mr. Carolla has not taken the matter lying down. He has started a campaign to raise funds for his legal defense and appeared on other podcasts to raise awareness, rally support to the cause, and otherwise demonstrate a hustle not to be found among all podcast hosts.

This isn't Personal Audio's first foray into the world of patent trolly. In 2011 the company won a \$8 million decision against Apple for infringing on patents held for downloadable playlists. That suit, along with the one currently pending against Mr. Carolla and his company, was filed in east Texas, a jurisdiction with a reputation for ruling in favor of patent plaintiffs and an unwillingness to allow for changes in venue. And in what can only be described as a stroke of remarkable fortune, the empty offices of Personal Audio just so happen to be located in east Texas, in the city of Marshall. The company has also sent out licensing demands to numerous other podcasts in an effort to extort every last dollar from the podcasting community.

Groups such as the Electronic Freedom Frontier have taken up the cause, seeking a re-examination by the U.S. Patent and Trademark Office on the basis of prior art. While Personal Audio filed the relevant patent in 2009 as a continuation patent on their original 1996 filing, the EFF is claiming to have evidence to nullify the company's original claim. At stake is the future of podcasting as we know it; a ruling in Personal Audio's favor likely means that small, independent podcasts that can't afford licensing fees would likely shut down, and the most-popular offerings will have to start charging listeners to download to cover those costs, weeding out those who download but don't listen. It remains to be seen what the court will rule to be factually correct, and what changes the USPTO make moving forward.





Interns Tell Taco Bell Doritos Locos Tacos “Nacho” Idea

In a development noteworthy to connoisseurs of sub-par ethnic cuisine and the nocturnally inebriated, a group of former interns is alleging that Taco Bell stole the idea for the Doritos Locos taco from them, which they claim to have come up with in 1995. The interns were working with Taco Bell's ad agency during that period and are claiming they came up with the idea for using a shell created from Doritos chips as part of a competition with the agency. Given that the Doritos Locos tacos have generated \$1 billion in revenue for Taco Bell since their launch in 2012, it seems remarkable that the idea didn't even win the interns the competition; the winning entry was a line of Taco Bell-themed appetizers called “Mexitizers”.

Andrea Watt, one of the interns, has held on to materials related to the product that the team developed, including pictures and advertising mock-ups. The team even dreamed up an advertising campaign featuring future Mr. Sunshine star Matthew Perry. Watt says that she isn't looking for compensation, but she “would just like someone to recognize it was a good idea.” Taco Bell issued a statement denying the claims, stating that numerous individuals over the years have presented themselves as the innovator of a similar product. An Air Force veteran and loyal Taco Bell customer created a Facebook page in 2009 urging Frito-Lay to create a taco shell from Doritos. And a prison inmate sued Taco Bell last May, claiming that he had come up with the idea for the Doritos Locos taco, in what can be considered a case of little standing and perhaps misplaced priorities. Not surprisingly, the suit was dismissed. And as the former interns are not currently pursuing further action, the world returns to being safe from hearing “Taco Bell” and “good idea” in the same sentence.