



THE NAME OF THIS BAND IS...TRADEMARKED

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Choosing a name is typically one of the first creative decisions for most bands and an important step in defining a band's unique identity. There are many considerations which go into the decision. However, choosing the right band name is often done without much thought about the importance of clearing rights to a proposed name or to taking steps to protect the exclusive right to use the name. Conducting a proper search of existing band names and filing for federal trademark registration are relatively easy and important steps to insuring that the name you choose will not cause problems later on.

Band names are not copyrightable, but they can be protected as trademarks. Trademark rights are established on a first-come, first-served basis. This priority of use occurs regardless of whether a federal registration has been filed. However, federal registration provides important statutory protections not available to unregistered trademarks - including notice to other groups choosing a name (which prevents claims based on "innocent use" of the trademarked name) and the right to sue for money damages for infringing uses of a federally registered name.

Federal trademark protection may not seem terribly important to a band just starting out. However, a successful band usually cannot tolerate the use of its name by another unrelated group since it can harm its reputation and cut into sales. Also, since record companies and distribution agreements of all kinds include warranty provisions guaranteeing the band's right to use the name, the existence of another group with the same or similar name can get in the way of record deals or expose the band to liability for breach of warranty after the deal is signed. At a minimum, a band which uses a name which is the same or similar to one already in use may be legally forced to stop using the name. In more serious situations the infringing band may be liable for substantial monetary damages.

After selecting a potential name for your band, you should conduct a search of existing band names. There are a number of free searches available, including band name registries on the internet and through artist rights groups including BMI and ASCAP. You can also search registries of assumed business names through your state's Secretary of State's office. You can also log on to the federal trademark database (TESS) maintained by the United States Patent and Trademark office (www.uspto.gov) and search for pending and registered trademarks. Finally, if you still have not found any potential conflicts, you should consider ordering a comprehensive search prepared by a trademark search firm such as ThomsonCompumark (www.thomsoncompumark.com). These search firms, which typically charge several hundred dollars per search, will do an exhaustive search on a variety of public and proprietary databases for the same and similar names, and will prepare a summary report for your records. Often it makes sense to have an experienced entertainment attorney review the report and interpret its conclusions in a formal legal opinion.

After you have conducted a thorough search, the next step is to register the name. State trademark registration is available but is of little practical value in most cases. Also be wary of unofficial registration systems - although these can be useful databases, they do not provide you with any legally enforceable rights. Only federal trademark registration will give you statutory protection under United States and international trademark laws. Although it is possible to complete the federal trademark application, it is often cost effective to have an experience entertainment attorney help you in order to avoid difficulties with the registration process.

Since trademark protection is based on priority it is important to begin the process as soon as you have selected a name. If you do not intent to use the name right away, you can "reserve" it by filing an "intent-to-use" application. Once an application for trademark registration is filed, it is reviewed by attorneys in the United States Patent and Trademark Office (PTO). If no problems, such as a conflicting mark, the application is published for opposition in the official Trademark Gazette, and, if no opposition is filed, a Certificate or Registration is issued. The process usually takes up to a year to complete, but you can continue to use the name during that time.



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As with other issues of intellectual property protection, it is important not to infringe on the rights of others and to take steps necessary to protect your own rights. It may seem like a lot of unnecessary time and expense to clear and register your band name when you are just starting out. Once you make it big (or people think you are making it big), however, it may be either too late or too costly to protect your band name or stop someone else from using yours.

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