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**Explored by Lee B. Beitchman
Rights in a Band Name**

Just as important as the name of a band becomes in creating a desired image to the public, so is the protection of that name for purposes of merchandising. For example, if your band develops its fan base without acquiring the right to protect that name, it may find itself unable to assert the benefits of U.S. Trademark law (the Lanham Act) in the event you discover that either another band has begun to use the name or that your band name is being reprinted on bootleg merchandise. Still another issue arises with band names when members split off and continue to try to exploit their affiliation.

The proper means of protecting your band's name is through the U.S. Trademark Office in Washington, D.C. Through the procedures described by that office, in association with the Lanham Act, a band can register their name. This process is inexpensive relative to the protection it affords and offers many benefits to the registrant. You can contact them at 1-800-786-9199 for automated information to begin the process and you can also request the general information booklet which provides instructions on securing protection for your name. Below, I will outline the steps in the process.

First, you should assure yourself that no one else has previously developed and used the name of your band. If you avoid this step and file an application, it may be rejected because someone else has already acquired the name. The best method of searching for prior use is to hire a search firm such as Government Liaison Services at 1-800-642-6564 (ask for Bob Forbes). The problem with this type of search is the expense. It can cost from \$200 up to as much as \$500. You can avoid this expense by checking with the Trademark Office for the closest library that maintains U.S. Patent & Trademark records. In Atlanta, the Price Gilbert Library at Georgia Institute of Technology is such a facility and they can help you conduct your search. If you decide to forego the search, your risk is a potentially lost filing fee of \$245 if the application is rejected due to a finding by an examiner that the mark is likely to be confusing with another name that is the same or similar to yours.

In my last article, I described the initial stages of the process by which a band could acquire federal trademark protection for its name. In this presentation I will round out the picture. Before I continue, I have done an internet search and found numerous services that will allow you to conduct an on-line search of your name relatively inexpensively. Remember, however, if they only search past registrations and not up-to-date applications or trade publications you are not getting the full picture. One on-line service I have had experience with is Micropat found at <http://www.micropat.com>. There are many others so look before you buy. As for the application process itself, there are generally two types of applications that you will want to consider. One is for a name already being used and the other, called an intent-to-use application, are for those applicants that have yet to use their name in interstate commerce.

Interstate commerce is the key to obtaining a federal mark because unless you use the trademark across state lines, the federal government has no authority to regulate such commerce and therefore cannot authorize the granting of the trademark. If you find yourself in this predicament, contact your state's Secretary of State about filing a state trademark application. This may serve your needs until you expand beyond your current state. On the other hand, if you are either planning to travel beyond your home state in the near future or will be doing so within a year, you may forego the state trademark process in favor of an intent to use application. Essentially, this application requires you to express a bona fide intention to use the mark within a year from the submission of your application. In this way you can apply even though you presently do not qualify for approval.

The concept is that by the time the trademark office has examined your application to determine if there is any conflict between your proposed mark and any existing, approved marks, you will have gotten to the stage of use in interstate commerce and the application can then be completed. Although the measuring gauge is one year, it has been my personal experience that the Trademark Office is far behind and will not respond for approximately nine months. Thereafter you will be given six months to establish proof of use and this may be extended as many as four times with good cause.

Therefore, you actually have some leeway in planning that first interstate use of the name. In case any of you are unclear as to what constitutes interstate commerce satisfactory to qualify for the application process, a gig in a state other than your home state, a radio interview broadcast in a state other than your home state, or a web page that can be accessed by fans and consumers in a state other than your own all satisfy this requirement.

To be continued— Next time, I will describe the process and the examiners criteria for validating your application. Mr. Beitchman, a graduate of the Georgia Institute of Technology and the University of Georgia Law School, has been practicing in the area of entertainment law and intellectual property law for over twenty-two years. His clients include popular music groups, authors, record companies, independent film producers and public corporations. Among the music groups Mr. Beitchman has represented in the past include Atlanta Rhythm Section, Kansas, and The Producers, and he is currently representing Vigilantes of Love (Capricorn/Mercury), Third Day (Reunion/Silvertone), Stuck Mojo (Century Media), Mindset (FAD), and unsigned acts Wolfgang Parker

and the Jumping Terrors, Three Lost Souls, Shaker Day, and Blacklight Poster Boys. Mr. Beitchman is a past officer of the Georgia State Bar Association section on Entertainment and Sports Law and has served in official capacities for NARAS, the "Grammy" organization, and the Atlanta Songwriters Association. He has also taught in the areas of music, films, book publishing and intellectual property and has been a panelist for numerous seminars covering these topics.

Recently, Mr. Beitchman appeared as an expert for an interview on CNN Sunday Morning. Mr. Beitchman is also a principal in the organization operating the Atlantis Music Conference in Atlanta during August 5-8, 1998. Mr. Beitchman, who was born and raised in New York, has been married for twenty-five years and has two children. He currently resides in Marietta, Georgia. You can contact Lee the cyber way at: LeeBeeBee@aol.com You can also reach him at: LEE B. BEITCHMAN Hassett, Cohen, Beitchman & Goldstein One Lakeside Commons 990 Hammond Drive, Suite 990 Atlanta, Georgia 30328 770-393-0990 Fax: 770-901-9417.