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Who Owns 'Hawk Tuah'? Can Haliey Welch Take on Trademark Copycats?

Aron Laszlo (Oppenheim Legal) · Thursday, December 5th, 2024

The 'Hawk Tuah' meme, popularised by Haliey (sic!) Welch, has prompted several third parties to apply for trademark protection in the EU. Can Welch, the 'Hawk Tuah Girl', challenge them?



collage from actual meme video

Bad Faith

Well, as a first option, Welch could argue that these trademarks were filed in bad faith. In the *NEYMAR* case (T-795/17), the General Court of the EU found that the registration of the name ‘NEYMAR’ as a trademark by a third party with no connection to the famous footballer was done in bad faith. The ruling underlines that using a well-known name to profit from another’s reputation can constitute bad faith under EU law.

The EU Intellectual Property Network (EUIPN) has clarified the assessment of bad faith in trademark applications through its recently published [Common Practice \(CP13\)](#), which elaborates on instances of bad faith, specifically mentioning scenarios such as misappropriation of third-party rights or abuse of the trademark system for personal gain.

In order to succeed, Welch would have to show that these third party applicants were aware of the strong association between Welch and the phrase ‘Hawk Tuah’ and applied for registration in order to capitalise on its popularity. An illustrative case is *SIMCA* (T 327/12 actually a ‘vintage mark’), where the applicant sought to benefit from the residual reputation of the SIMCA sign, despite its limited market presence. The General Court of the EU considered this behaviour to be dishonest and ruled that the registration of a trade mark solely for the purpose of exploiting residual reputation constitutes bad faith.

Welch’s case could be strengthened if she could show that the applicants were aware that ‘Hawk Tuah’ was her unique creation, in addition to the lack of a genuine business purpose for the sign. CP13 specifically deals with defensive applications and states that trade mark applications which lack honest commercial intent may be invalid. This was reiterated in *TARGET VENTURES* (T-273/19), where the General Court of the EU held that defensive applications filed solely to prevent others from using the mark, rather than for genuine business purposes, may be invalidated for lack of good faith.

If these ‘Hawk Tuah’ trademarks are deemed to have been filed in bad faith, it could set a precedent for other influencers to defend their unique expressions against opportunistic trademark applications.

Copyright

Welch could also argue that she owns the copyright to the phrase ‘Hawk Tuah’, which could act as a prior right and potentially prevent it from being registered as a trademark by third parties. In the EU, copyright protection is granted to “original works of authorship” which reflect a certain degree of creativity and originality. However, it is generally accepted that terms or short expressions do not qualify for copyright protection.

The phrase ‘Hawk Tuah’ is unlikely to be considered an original literary work worthy of copyright protection. The CJEU clarified in the *Infopaq* case (C-5/08) that originality requires the ‘intellectual creation’ of the author. Short phrases typically lack the creative expression to qualify as such.

However, Welch’s case could be different if she argues that her full phrase – ‘Hawk Tuah, You Gotta Spit on That Thang!’ – has enough originality and creativity to be protected by copyright. Unlike single phrases, more complex and unique expressions may be eligible for copyright protection if they contain sufficient creativity.

Copyright therefore offers little recourse for her to claim prior rights over the term, even though it originated with her. Given the challenges of meeting the originality threshold, Welch may find it difficult to claim exclusive rights to ‘Hawk Tuah’ as a copyrightable work in the EU. As a result, third party signs consisting solely of the phrase ‘Hawk Tuah’ would be unlikely to succeed on copyright grounds.

However, the situation might be different for a trademark such as ‘HAWK TUAH YOU GOTTA SPIT ON THAT THANG!’ (EUTM application [019047486](#) by an individual from Germany), which contains the full phrase. In this case, Welch may have grounds to challenge the cited trademark if the full phrase is considered to meet copyright standards as an original work. However, some might argue that ‘Hawk Tuah’ is merely an onomatopoeia similar to ‘ptooy’, the transcription of which is not even Welch’s, and that ‘thang’ merely reflects her accent.

Can the Hawk Tuah Girl Win?

Welch faces a complex challenge in protecting the phrase ‘Hawk Tuah’ from third-party trademark applications in the EU. While copyright law may not offer protection for such a short phrase, Welch has the potential to use bad faith arguments to invalidate registrations that seek to exploit her popular phrase without legitimate justification.

Welch’s strongest defence may be to show that these applications were opportunistic and filed solely to capitalise on the popularity of the phrase. Ultimately, a successful challenge could not only protect her use of the term in commerce, but also set a precedent for influencers and creators seeking to control the commercial use of their viral content.

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