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What do unibrows and trademarks have in Common? Why, Anthony Davis, Jr., of course.

By: RFG Attorney Michael D. Fishman

Like Jay Leno and his notable chin and Justin Bieber and his adored hairstyle, Anthony Davis Jr., the highly acclaimed NBA basketball player for the New Orleans Hornets and former power forward for the University of Kentucky, has his UNIBROW.

While most teens, college students and young adults would tweeze or shave their unibrows out of embarrassment or fear of ridicule, Anthony Davis celebrates his. Apparently, so do

his fans who wear “unibrow” masks and otherwise glorify Davis by wearing clothing, creating posters, and baking cookies all with unibrow themes. Even the University of Kentucky’s Wildcat mascot has been seen sporting a unibrow.

Fans and the media alike identify the player’s notable unibrow with Davis and him alone, as well as his star performance on the court. So much so that earlier this year Davis filed applications to register the brow-catchy phrases

“RAISE THE BROW,” “BROW DOWN” and “FEAR THE BROW” with the U.S. Patent and Trademark Office as trademarks to capitalize on the unibrow hysteria. Undoubtedly, Davis’ unibrow will find its way into the marketing and sale of numerous promotions and sponsorships by Davis and the NBA, involving the many categories of products listed in his trademark applications, from apparel to water bottles to bumper stickers to, ironically, after-shave.

XXX Domains May Put Your Mark at Risk

By: RFG Attorney Robert J. Kimmer

The new .XXX domains open up another opportunity for cyber squatters to steal and tarnish your valuable corporate brand. And whether an entity is a brand owner in the adult entertainment industry or not, anyone can now own a .XXX top level domain.

Rader, Fishman & Grauer, in January, 2012, won one of the first Rapid Evaluation System (RES) proceedings on behalf of a significant worldwide brand owner. In this case, the new RES proceeding favored our client (the legitimate trademark or brand owner) more so than the older, traditional Uniform Domain-

Name Dispute-Resolution Proceeding (UDRP).

But what is RES? A Rapid Evaluation System proceeding is a faster, less costly version of a UDRP. More specifically, RES is a VERY fast process with a preliminary decision in some cases in just two days. This relief can temporarily shut down the infringing domain, akin to a preliminary injunction. This sort of relief is not available in a UDRP Proceeding and traditionally could only be obtained through federal court litigation. The RES process is unique to the .XXX domain market. How fast is RES? Most cases last only 3 weeks. In comparison, UDRP actions may be considerably longer,

while federal court litigation may take months or years. If efficiency is not convincing, then the relative costs should prove valuable. RES proceedings have proven to be a minor expense when compared to the cost of traditional trademark enforcement mechanisms. Companies are complimenting the new RES process to enforce legitimate trademark rights, giving brand owners another option to thwart cyber squatters. One day, this form of faster relief through RES may become a widely available option for other new domains and possibly for the new generic top-level domains (gTLDs).

Enforcement of Intellectual Property Rights by U.S. Customs and Border Protection

By: RFG Attorney Nivita Beri

Today’s global economy requires businesses to adequately protect and enforce their Intellectual Property rights by obtaining the protection of patents and trademarks and registering copyrights. Once these fundamental routes of protection are obtained, a valuable enforcement resource exists with the U.S. Customs and Border Protection (CBP).

CBP devotes substantial resources to target, intercept, seize and forfeit shipments of counterfeit goods. Owners of registered trademarks and copyrights can record their registrations with the CBP to thwart importation of infringing foreign goods into the U.S. The recorded information is entered into an electronic database accessible at all 329 U.S. ports of entry. The CBP relies on the recorded information to actively monitor shipments to prevent the importation and exportation of infringing goods.

Only trademarks registered on the Principal Register of the USPTO are eligible for recordation with CBP; and only copyrights registered with the U.S. Copyright Office are eligible for recordation with CBP. Patents registered with USPTO cannot be recorded with CBP, however enforcement is possible if an Exclusion Order has been issued by the International Trade Commission.

In October 2005, CBP released the Intellectual Property Rights e-Recordation system (IPRR System). There are many benefits of filing with the CBP by using their IPRR System including, elimination of paper applications and the need for supporting documents, like physical copies of registration certificates; the availability of intellectual property rights information at various ports to help CBP Personnel with infringement determinations; and the ability to allow rights owners to upload images of their protected work or trademark, thus eliminating the need to send physical samples to the CBP. Additionally, when completing the online application, the required fee of

\$190 per International Class can be paid by credit card, check, or money order.

Intellectual property rights recorded with the IPRR System are easily searchable through the Intellectual Property Rights Search Database (IPRS). The IPRS contains recorded trademarks and copyrights, which are available for viewing by anyone. Results can be retrieved based on simple or complex search strategies using keywords and Boolean operators.

Additionally, owners of intellectual property rights are encouraged to submit allegations of potentially infringing shipments or suspicious infringing conduct to the CBP, through its online reporting system called e-Allegations. The information submitted through e-Allegations is disseminated to the appropriate office or port of entry for investigation and eventually for criminal prosecution, when applicable. The submissions can be made anonymously and may include photos and other documentation.

CBP encourages intellectual property rights owners to proactively assist in the infringement determination process. For example, rights owners can create product identification guides, which should include information about the company/individual, physical characteristics of the product, photos of the genuine product comparing to photos of suspect version of the product, and manufacturing information. All product identification guides are submitted to the CBP and placed on CBP’s internal websites and linked to the e-Recordation system, in turn providing CBP Field Personnel assistance in making infringement determinations. Another viable option is for companies to provide Product Identification Training Sessions to CBP Field Personnel located at various ports of entry. This allows company representatives to have face-to-face interaction with the CBP Field Personnel who will actually be inspecting shipments and looking for potential counterfeit products or other infringing goods.

To provide a summary of intellectual property theft, the CBP Office of International Trade has issued statistics that evidence the number of seizures in the Fiscal Year 2011 and the increases in Intellectual Property Rights seizures from FY 2010 (i.e. seizures increased by 24% to 24,792 in FY 2011, from 19,959 in FY 2010). Further, the below pie chart itemizes the percentages, by category of goods, of the top commodities that were seized in FY 2011.

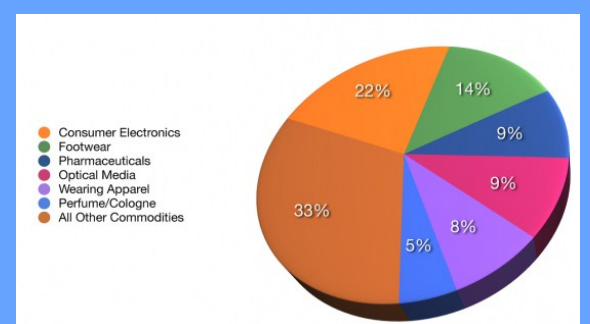


Chart 1. FY 2011 Seizure Statistics

Thus, as the data shows, “Consumer electronics was the top commodity seized in FY 2011, with the value of seizures increasing by 16% compared to FY 2010. Approximately one-third of the seized goods in this category were infringing cellular phones. For the first time since FY 2005, footwear was not the top commodity. The domestic value of footwear seizures in FY 2011 declined more than 75% from the all-time high of \$102.3 million in FY 2008. This is due to a sharp decline in the number of large footwear shipments arriving at seaports. Seizures of counterfeit perfume/cologne increased in valued by 471% to \$9.4 million in FY 2011, which can be attributed to increased partnerships with right holders and successful coordinated enforcement efforts. FY 2011 is the first year that the category of handbags/wallets/backpacks did not make the ‘Top Commodities Seized’ list.” Intellectual Property Rights Fiscal Year 2011 Seizure Statistics, Prepared by CBP Office of International Trade, US Customs Border Protection, U.S. Immigration and Customs Enforcement.