

# Intellectual Property & Technology Law Journal

Edited by the Technology and Proprietary Rights Group of Weil, Gotshal & Manges LLP

VOLUME 31 • NUMBER 4 • APRIL 2019

## Seven Trademark Tips Every Podcaster Should Know

By Michael DeBlis

Podcasts are exceedingly popular. It is an excellent way for people to consume all manner of information— and the medium provides much needed relief from the sound-bite driven 24 hours news cycle which has devolved into a kind of nonstop “Reality TV.”

Podcasts can be launched by just about anyone with even some basic computer equipment, and it is a great way to bypass the media monopoly on access to audiences. However, if you are a podcaster, there are vulnerabilities to your trademark that need to be addressed.

To that end, this article provides some valuable tips to help you protect your brand, and your income, as you begin or continue your journey into the wild world of podcasting.

### 1. Keep Track of Your Trademarks

Any number of things can be trademarked due to the fact that they are the products of the imaginative process. A trademark is anything associated with your intellectual property that is distinct to your work. It identifies you as the source of goods

or services. Trademarks are broad and can include anything from brand names, product names, logos, and slogans and anything in between. Darth Vader’s mask is a trademark, as is Ronald McDonald’s clown suit.

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Copyright law cannot protect an idea. Darth Vader’s mask is more than an idea — it is a distinct set of geometric shapes with a consistent and current history of use in commercial trade. If Lucas were trying to protect the notion that a space cyborg might wear a scary mask, he would not have won millions in copyright litigation cases.

When it comes to owning a trademark, it is on a first-come-first-serve basis. When it comes to trademark rights, the early bird gets the worm. The right to claim a trademark goes to the first individual to use that mark for similar goods or services. This means that if another person has already used a name that you want to use, that person has superior legal rights even if they never registered the trademark.

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In a court case, a party alleging that they were “first in time” would have to prove that they were the *first* person to use a distinctive intellectual device. The way a judge would resolve whether or not something is a trademark – and that it is yours – is by assessing whether it is unique to your program, whether or not it is distinct and not wholly ideological in nature, and whether or not its use is recent and ongoing.

When it comes to your podcast, the highest priority should be given to trademarking its name. However, there are other things that need to be protected too, such as characters, intro and outro sequences, certain catchphrases, and the like.

## **2. Talk to an Intellectual Property Lawyer**

If you are going into entertainment via podcasting there is a good chance that economics has something to do with your choice of medium. However, if you intend to make a significant amount of your income by podcasting, then it is worth protecting your investments of time, effort, and capita by obtaining legal advice.

As previously discussed, copyright law and trademark laws are vague. Trademarks can be hard to pin down. You can bet your reputation that the big podcasters are going to have hard-hitting lawyers who are always standing by ready to defend their client’s corner on the market whether or not their claims to a given trademark are even valid.

Just consulting with an intellectual property lawyer can help you understand the waters you are swimming in – and to be wary of the sharks that inhabit them. At the very least, it provides peace of mind.

## **3. Protect Your Podcast Title**

Unlike most other trademarks, a title is a pretty cut and dry example of a basic trademark. If your podcast is new, and not well established – and you intend to build it up into a viable brand – you need to register your title as a trademark. In 2013, a study was published that showed brands legally registered with the U.S. Patent and Trademark Office were 50 percent more likely to be successful. Certainly, this has something to do with the fact that people who trademark their titles are more dedicated than those who do not. But it is undeniable that 50 percent also benefited from

the legal protection which registering their trademarks provides.

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### **The name of your podcast is the most important thing that you should consider as a trade-markable item.**

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Below are a few of the more perplexing points that can trap the unwary when it comes to protecting your podcast title:

- Owning a domain name does not give you the right, *carte blanche*, to use that name as a trademark for your podcast.
- Generally speaking, the law treats words or phrases that sound similar as the same trademark. In other words, if your podcast shares a name with another podcast, but you spell yours differently, you might still become ensnared in the thicket of trademark thorns.

## **4. Register Your Mark with the U.S. Patent and Trademark Office and/or the Trademark Offices of Other Countries Where the Podcast Will Be Aired**

Registration provides a myriad of benefits, not the least of which is a presumption under the law that you are the rightful owner of the mark. This means that in the event of a dispute, you have the benefit of the law on your side. This is invaluable insurance to have in the case of a legal conflict.

## **5. Mind the Gaps**

The name of your podcast is the most important thing that you should consider as a trademarkable item. However, as your program matures and grows in popularity, you are sure to discover a number of devices that you will want to protect as your own.

Your logo might be a trademark if it identifies your brand as the source of goods or services. You might have catchphrases and slogans. How about the individual names of each podcast episode? Maybe you are launching a podcast network and each show has its own name.

This can seem petty and excessive. Often times, audiences will protect creators by simply turning

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off entertainers who steal other entertainer's material. But when you are new to the game and under-established, it may be in your best interest to register catchphrases – or even the names of individual episodes – as trademarks. If you are using YouTube to host your work, this can be even more important because popular uploads are frequently mirrored, taking valuable views away from rightful creators.

## **6. Plan for Expansion of Your Brand into Other Media**

Let's assume that your podcast is a resounding success and that you have the opportunity to grow the brand into other segments of the industry. The same trademark rules will apply. If there is any possibility, no matter how far remote, that your podcast might become a brand for other types of goods or services, you must "clear" its name in those categories too.

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**The general rule is if you have not used a trademark in a commercial exchange in three or more years, someone else could use it, or even register it themselves.**

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To do this, imagine what spinoff goods or services your podcast might turn into: A book? A webinar? A Netflix series? Public speaking or hosting conferences? A business podcast might turn into a consulting service. Hey, you never know!

It would be a pity to be deprived of the opportunity to leverage your brand in other mediums because someone in that space is already using your name. But if you plan accordingly, you can reap the fruits of your labor.

## **7. Use It or Lose It**

Trademarks do not last forever. They have an expiration date. Copyright judges have a lot of leeway on these cases. But the general rule is if you have not used a trademark in a commercial exchange in three or more years, someone else could use it, or even register it themselves.

Be careful when adopting a previously-used trademark. As tempting as it might be, there are hidden dangers. Out of an abundance of caution, I recommend choosing an authentic, original name and not a brand name that has been used before even if it has been abandoned and "sounds perfect."

Good luck on your journey into podcasting!

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