



TRADEMARK BOARD CONFIRMS THAT NEW YORK YANKEES ARE EVIL

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By [Janet Marvel, Partner](#)

As a life-long Chicago Cubs fan, I am pleased to report that the Trademark Trial and Appeal Board (TTAB) has held that the New York Yankees are known as the "Evil Empire" and therefore, a third party using that term would create confusion as to source or sponsorship.

In *New York Yankees Partnership v. Evil Enterprises, Inc.*, 2013 WL 1305332 (TTAB February 8, 2013) (non-precedential), Evil Enterprises, Inc., the owner of a web site selling Yankees-related products, filed an application for BASEBALLS EVIL EMPIRE. The Yankees opposed, claiming that the team owned the name, and Evil Enterprises' mark would confuse the public. The Yankees also alleged that BASEBALLS EVIL EMPIRE created a false suggestion of connection between the applicant and the Yankees, and that the mark disparaged the Yankees.

The Yankees first had to prove that they owned the mark EVIL EMPIRE, even though they had never used it themselves. Typically, the first party to use a mark is held to be the owner, but the Board held that the Yankees were entitled to a little-used exception, namely, that "even if a company itself has not made use of a term, it may have a 'protectable property right in the term' if the public has come to associate the term with the company or its goods or services." Other companies have employed this exception. IBM was held to own BIG BLUE, Coca-Cola owned COKE, and Harley-Davidson owned HOG under this theory. Note that some companies have now adopted their nicknames and own registrations for them.

The Yankees evidence that it owned EVIL EMPIRE was Legion (pun intended). The Board had no trouble agreeing that the Yankees owned the mark and that the applicant's mark both was likely to confuse the public, and likely to create a false association between the Yankees and the applicant.

The Board rejected the Yankees' argument that EVIL EMPIRE disparaged the team, noting at one point in the opinion that the Yankees used Star Wars music (presumably the Darth Vader theme) during games. In a particularly cogent comment, the Board stated "[H]aving succumbed to the lure



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of the dark side, opposer will not now be heard to complain about the judgment of those who prefer the comfort of the light."

The takeaways from this case are (1) the Yankees are evil and the Cubs, by implication, are loveable, and (2) that if a company is known by a famous nickname, it may be able to claim ownership in it, even if it has not itself used the nickname in commerce. If a company finds itself yoked with a nickname, it should consider adopting and using the name, thereby making misuses of the name easier to curtail.

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