

Chicago trademark litigation attorney, Belinda Scrimenti, and her Pattishall, McAuliffe colleagues successfully conclude Federal court litigation to protect the Peabody Hotels' Peabody name and famed marching ducks.

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Ms. Scrimenti represented the owner of the Peabody Hotels in the case filed in Memphis, *Peabody Management, Inc. v. Peabody Painting and Waterproofing, Inc.* (U.S.D.C. W.D. Tenn. No. 07-2675). Concluding the case, Judge Bernice B. Donald recently entered a Consent Permanent Injunction that enjoins a national hospitality industry painting contractor from acts of trademark infringement and trademark dilution by use of the name "Peabody" and combinations of the Peabody name with a duck logo. Under the terms of the injunction, the defendant has a limited period to transition to a new name that will not incorporate the name "Peabody."

Prior to the litigation, in addition to registering over 40 traditional word and duck logo and design marks on behalf of the Peabody Hotels, Ms. Scrimenti had successfully registered one of the most unique marks on the U.S. trademark register – the motion of the famous Peabody Hotel Duck March itself.

In the lawsuit, the defendant's president had admitted that he was "inspired" to adopt the Peabody name by virtue of a visit he had made to The Peabody Hotel in Orlando. He then added duck imagery to his logo. Peabody Hotels had alleged in the lawsuit's complaint that, despite such knowledge, the defendant failed to conduct routine trademark searches prior to adopting its name and logo, and that the defendant's logo was created in part "upon, information and belief, by working from a copy of a Peabody Hotel website and Peabody Hotel promotional materials."

The litigation was filed after the defendant had sought to register a trademark featuring a combination of the "Peabody" name and a duck logo. Ms. Scrimenti noted, "To allow Peabody Painting's continued use of the marks would have irreparably diminished the value and goodwill these combined images have in the mind of the public, which readily associates "Peabody" and ducks with the famed Peabody Hotels. Indeed, a simple Internet search reveals that the words most commonly used with news reports and blog entries about Peabody Hotels are 'famous' and 'ducks.'"

Reflecting the public's fascination with the Peabody marching ducks, the consent injunction has been the subject of considerable publicity in Memphis, Orlando, and nationwide, after the company's press release issued and the story was picked up by the Associated Press. As one headline read, "The Peabody Hotel has something to quack about." *See, e.g.:*

- Peabody Hotels' press release - <http://www.marketwire.com/press-release/Peabody-Management-Inc-985090.html>
- *The Wall Street Journal Digital Network's Smart Money* site - <http://www.smartmoney.com/news/pr/?story=PR-20090506-000173-0600>
- *Yahoo! Finance* - <http://finance.yahoo.com/news/Peabody-Hotels-Successfully-iw-15145677.html>

- *News Blaze* - <http://newsblaze.com/story/2009050603001300006.mwir/topstory.html>
- *Associated Press* (published by WMC-TV, Memphis, TN)
<http://www.wmctv.com/Global/story.asp?s=10315187>
- *Orlando Sentinel* - <http://www.orlandosentinel.com/travel/attractions/orl-cfbtourism-disney-kidani-051109051109may11,0,2701622.story> (3d article "Defending the Ducks")

"The three Peabody Hotels, located in Memphis, Little Rock and Orlando, are known, not only in the national and international hotel industry as hotels of the highest quality, but are universally recognized because of the widespread use of the duck logo, which is synonymous with Peabody Hotels," said Peabody Management president, Marty Belz. "We have carefully cultivated the Hotels' brand image in association with the duck logo for 76 years. This brand continuity is the result of the dedication of Peabody employees who have perfected every detail of our use of the Peabody name in combination with our Peabody Duck theme. This action demonstrates that we will do everything necessary to forcefully protect these valuable rights against this type of encroachment," Mr. Belz added.

Starting with the original Peabody Hotel – a Memphis icon and Southern institution listed on the National Register of Historic Places – the three Peabody Hotels have become world-famous for their marching ducks. In Memphis and at the sister Peabody Hotels in Orlando and Little Rock, every day at 11 a.m., the Peabody Ducks are led from their penthouse Royal Peabody Duck Palace, to a specially-reserved elevator. They are escorted to the Lobby by their Duckmaster, who is clad in a crimson and gold-trimmed jacket. They then march on a red carpet to their magnificent marble fountain, through crowds of admiring spectators to the tune of John Philip Sousa's King Cotton March as cameras flash. The ceremony is reversed at 5 p.m., when the ducks retire for the evening.

The Peabody Ducks, currently celebrating their 75th Anniversary Year, are one of the top three attractions in Memphis (along with Graceland and Beale Street). People come from all over the world just to see the ducks. The Hotels' web-footed ambassadors are also national celebrities having appeared on *The Tonight Show* with Johnny Carson, *Sesame Street*, *The Oprah Winfrey Show*, *People* magazine, *Sports Illustrated* Swimsuit Issue, the *Washington Post*, and the *Wall Street Journal*. The Peabody Ducks also make appearances at wildlife festivals, sponsored or supported by the Interior Department, to promote and support the conservation and preservation of migratory wildfowl habitats.

Protection of the marks was critical in light of the Peabody Hotels' well-known reputation for excellence. The Hotels are members of Preferred Hotels & Resorts, and hold innumerable, top industry awards for quality, including the coveted Mobil Travel Guide Four-Star and the AAA Four Diamond awards. They have also been named as one of Travel & Leisure's World's Best Business Hotels, and among Zagat's Top 100 Hotels in the United States.

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