Assess Liabilities: Trademark

Research Paper Outline

The entertainment industry is a group of sub-industries that strives to ‘entertain’ the consumers, which includes the fields of film, theater, dance, opera, music, television, radio, publishing, and fine arts. Therefore, because this industry embodies both business and economical scrutiny, it is apparent that all areas of law is involved including: trade secret, trademarks, patent, copyright, contracts, constitutional law, tax, tort, privacy and publicity. The objectives of this paper are to identify five legal liabilities that may apply to my business, TBM Productions, explain why my business would be prone to each of these liabilities, and provide an actual court case for each liability listed.

New Kids on the Block v. News America Publishing, Inc.

According to the United States Patent and Trademark Office (2016), a trademark is a design, phrase, symbol, or a design word that distinguishes and identifies the source of goods and services from one business to another. Protecting TBM Productions company’s logo and slogan is vital because it protects the brand. Furthermore, protecting the company’s trademarks not only protects the company’s brand, but creates product and services differentiation, and allows for competitive advantage. TBM Productions will make strides in ensuring that the company does not take part in intellectual property rights infringements by taking a proactive approach such as continuous research and monitoring, adhering to the appropriate paper, and obtaining the appropriate legal counsel. TBM Productions may be prone to trademark liabilities because in the music industry, there are ‘fads’ and ‘trends’ and this can be a very slippery slope because these two concepts are short-lived and therefore, someone or a company may not do all the necessary research and rush into keeping up with the latest fads and trends; and whether intentional or unintentional trademark infringement may occur. In addition to the argument of ‘likelihood of confusion’ may be argued, which states “the owner may claim trademark 'dilution,' asserting that it owns a famous mark and the use of your mark diminishes the strength or value of the trademark owner's mark by 'blurring' the mark's distinctiveness or 'tarnishing' the mark's image by connecting it to something distasteful or objectionable-even if there is no likelihood of confusion (United States Patent and Trademark Office, 2018).”

A great example of intellectual property law infringement is the case ‘New Kids on the Block v. News America Publishing, Inc, ’which took place in the U.S. Court of Appeals for the Ninth Circuit. The 90s boy band the ‘New Kids on the Block’ sued the publishing company over a teen poll because the publishing company encouraged the teens to call a paid 900 number to vote for their favorite band member; because the publishing company profited from the calls the New Kids on the Blocked sued for trademark infringement, citing ‘misappropriation’ (Dunning, J. P. 2006). The U.S. Court of Appeals ruled in the newspaper’s favor because the paper could not identify the band by any other title or term, the case was decided on July 24, 1992 (Justia, n.d.).

Robin Thicke & Pharrell Williams v. Marvin Gaye

Copyrights protect original works of authorship or ‘tangible medium of expression,’ which has an expiration date and depends on several factors (United States Patent and Trademark Office, 2016). One of the major copyright infringements I foresee TBM Productions may be prone to is sampling the use or a portion of a prior recording, which is then incorporated into a new composition. Remember in order to sample from an existing recoding two permissions are required, which are as follows: permission for the usage of the underlying composition usual owned by the publisher or songwriter and permission for the usage of the master recording usually owned by the recorded label (Robley, 2019). A common misconception is the fair use doctrine, therefore, TBM Productions will always seek permission before sampling another’s work the eliminate the risk of possible lawsuit(s).

An example of a court case that dealt with copyright infringements because of sampling was the case ‘Robin Thicke & Pharrell Williams v. Marvin Gaye,’ which the hearing took place at the U.S. Court of Appeals for the Ninth Circuit decided in 2015. According to Justia (n.d.), the family of Marvin Gaye did not accuse Robin Thick and Pharrell Williams of direct plagiarism to the phrase or lyrics, but that the collaboration ‘Blurred Lines’ imitated Gaye’s 1977 hit song ‘Got to Give It Up.’ In fact, judge Jacqueline Nguyen stated that the verdict allowed the Gaye family “to accomplish what no one has done before: copyright a musical style,” which definitely sets precedent for future similar cases. According to Press (2015), the Marin Gaye’s children was awarded almost $7.4 million in the ‘Robin Thicke & Pharrell Williams v. Marvin Gaye’ case.

Lil Wayne v. Cash Money Records, Inc.

The benefits of signing to a record a label is that the label assist with marketing, promoting, manufacturing, distributing, and selling the artist’s music. An artist will enter into written recording agreement or contract, which protects both parties. Contained within the contract are provisions such as the duration of the contractual agreement, the royalties to be paid to the artist, the recording budget, and basically the obligations both parties have to one another. TBM Productions will be prone to this liability because not only does the company have to worry about breaching contract obligations, but an artist as well may breach contract obligations with TBM Productions. Breach of contract agreements could bring about potential lawsuits, negative publicity, and have a negative impact on the brand.

The ‘Lil Wayne v. Cash Money Records, Inc.’ According to Vozick-Levinson (2015), rapper Lil Wayne sued his former record label Cash Money Records for ‘alleged financial misdeeds’ and claiming that the record label violated his contract terms; alleging the label owes him money from his album entitled ‘Tha Carter V’ and for the work on the album ‘The Free Weezy Album.’ The case hearing was scheduled0 to be heard by the United States District Court (New York, Southern), which Lil Wayne was suing for $51 million in 2015 (Scribd, n.d). However, the case was settled outside of court and Lil Wayne received $10 million (Penrose, 2018).

A&M Records, Inc. v. Napster, Inc.

Piracy is the unauthorized reproduction, distribution, copying, theft, and duplication of copyrighted content, which is protected of copyright law. An interest fact uncovered while researching is that piracy is truly an never ending battle. In fact, the term ‘piracy’ was first used U.S. Supreme Court cases dating back to the mid-17th century, “the term is derived from the Latin pirata, derived from the Greek peirates, which means 'sea robber (Techopedia).' The

digital era of technological advancements is on the rise at an unprecedented rate. TBM Productions will be prone to the effects of piracy because it is happening all around us; from the use of ‘jailbroke’ firesticks to illegally song and movie downloads piracy has a demanding presence within the entertainment industry. Therefore, in order to eliminate risks and reduce threats of potential piracy TBM Productions must take a proactive approach to safeguard the company for not only intellectual property right violations, but enforce the right of copyright infringement. In addition, investing in solution of top notch Internet securities to protect the intellectual properties. Artists signed to TBM Productions may feel as though we are not moving at their speed and may choose to illegal leak their music onto a variety of social media platforms, which will be a form of piracy and a breach of contractual obligation, which is why TBM Production will strive to have ‘iron clad’ contracts and binding legal written agreements.

An excellent court case of copyright infringed because of piracy is A&M Records, Inc. v. Napster Inc., which the hearing took place in the United States Court of Appeals for the Ninth Circuit in the year 2001. In 1999 Napster was a major digital file-service which allowed users to digitized, download, search, and search music files from one user to another who have already downloaded the same file sharing program. A&M Records, Inc. argument was that corporate music producers complained that Napster illegal obtained their copyrighted works from the use of each other’s computer networks without prior copyrighted authorization. Napster’s argument was the use of the fair use doctrine. However, the United States of Appeals ruled that Napster violated copyright infringements (Zepeda, 2002).

Privacy and Publicity

According to Goguen (2019), defamation of character is an untrue and false statement that someone makes in regards to you, which they publish as a statement of fact, which in turns harms your professional and personal reputation causing you ‘damages’ included and not limited to emotional distress and financial loss. TBM Productions may likely be prone to defamation of character because being a public company there is a lack of privacy. Therefore, with this lack of privacy you are always deemed under a social microscope whether its social media or in public; it almost seems as though most people are not looking for positive publicity. On the contrary, those same individuals are waiting for the perfect opportunity to shed light on negative publicity, which may result in untrue and false statements about the company; having a negative connotation associated with TBM Productions, thus affecting the brand.

The ‘Andrea Constand v. William H. Cosby, Jr. was a sexual assault case that was a civil suit filed in March of 2005 and by November 2006 both parties reached a mutual agreement ant Constand was award over $3 million. This was the means to an ends because shortly after this court cases new sexual harassment cases and charges were filed against Cosby. Cosby’s wholesome reputation has never been the same even when some alleged victims have already come forward to drop charges and openly admitted they were not victims of alleged sexual assault, but by then his reputation and brand were already damaged and beyond repair. Cosby was convicted and is serving a three-ten year prison sentence and has agreed to settle seven lawsuits by seven women who accuse Cosby of sexual misconduct allegations who say he defamed them, held in the U.S. District Court of Massachusetts (Dale, 2019).

Conclusion

The entertainment industry multifaceted billion industry. Therefore, it is imperative that TBM Productions retains the very best legal counsel and an attorney that specializes with entertainment law and understands the ‘show business.’ Furthermore, reducing and eliminating potential litigation risks and profit losses. Understanding and knowing your legal rights is vital to the success and longevity of the company, whether it is intellectual property rights, contracts and agreements, tort or constitutional law, or privacy and publicity. Protecting the TBM Productions brand and image is extremely important; having the ability to safeguard your company against negative publicity and defamation is imperative. Not only will TBM Productions have the entertainment law lawyers, but having the right public relations team put in place are means of not only assessing probable liabilities, but a contingency plan reduces potential threats.

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