

NJORD Estonia: What is the value of an artist's name?

There is a common misconception that copyright law also protects the name of an artist. Copyright laws protect the outcome of the creative work: music, poems, etc, while trademark law regulates trademark registration and the enforcement process.



The music industry is concerned mostly with the topic of royalties, but it is just as important to talk about the benefits of using the name of the artist as a trademark. Just like songwriting or a stage show, an artist's name is one of the most valuable assets and an integral part of the artist's brand as a whole. Usually, the necessity of registration of a trademark only becomes important when problems have already arisen, for example, in connection with the fact that someone else has started using the same name.

Just as there are people who have been given the exact same name, there may be two artists with identical names as well. The use of one's name may be a deliberate and malicious activity that simply serves the purpose of earning profit. For example, the use of the same name does not necessarily mean using the name in the music industry context, but the artist's name might be on t-shirts, soft drinks and toys, creating a misconception, as if the artist themselves was affiliated with the marketing of the fan merchandise. All fans who buy the t-shirts with their idol on, want to support their favourite artist with this activity, but in reality, this may be not the case. Instead, they are supporting a company that has used the artist's name in a clever marketing trick to sell their products. This situation would be easier to solve by enforcing the artist rights for the name if the artist had registered a trademark.

Should the artist register their stage name as a trademark?

One of the most common questions that musicians and artists ask is whether they should register their name as a trademark. In many cases, their personal name is used as their performer/stage name. This name is a property of tangible value and its protection is an important decision for the artist. Personal names can be registered as trademarks under the EU Trademark Regulation. One of the main objectives of a trademark is to distinguish goods or services of one person from the same kind of goods or service of another person. As consumers we want to know whose goods or services we use or enjoy.

Getter and smoke detector Nublu

A good example is the Estonian artist Getter's dispute with the American artist named Getter, which resulted in the Estonian artist deciding to use her full-length personal name, Getter Jaani, to avoid a costly and complicated court dispute. Although the majority of the Estonian population know her as Getter, it was easier to change her name into Getter Jaani rather than getting into a dispute with the US attorneys. Obviously, the situation would have been different if the name had been registered as a trademark in Estonia or in the EU.

A person's name might not always be their artist name, instead they might use pseudonyms, for example the Estonian artist Tommy Cash or nublu that has recently gained popularity. The younger generation would probably be surprised to find out about Jaan Rannap's book written in the '70s of a fire department dog called Nublu. To them, the name Nublu relates to a young rap artist. Although the writer expressed his disappointment in the media that the young rapper had chosen the name of his book character, in practice, the use of the same name does not cause any practical problems because the areas and target groups in this case are completely different. Therefore, there is no likelihood of confusion in the market and the two names can easily co-exist without any problems.

However, as the name Nublu has become very popular overnight with the rapid success of the musician, a company selling smoke detectors has decided to file a trademark application. It might be a well-timed coincidence, but it is more likely just clever marketing. Fortunately, this does not cause practical problems, because nobody seems to think that the rapper has started to advertise smoke detectors and so it will not confuse consumers.

Name as a brand

An artist should think about the broader use of the name and consider the fact that a trademark is registered for a period of 10 years and can later be extended for 10 years at a time. Therefore, the strategy needs to be carefully thought through before choosing an artist name. It should also be borne in mind that a trademark applies to the certain goods and services for which it is registered. Even if an artist does not plan to conclude a license agreement right away or to put out certain kind of goods themselves, one should consider, the next five years and the areas in which they are planning to operate. For example, if an artist has some kind of sport close to their heart and would like to work with some of the companies that are involved in that specific field and create a collection of clothing line. Or the trademark can be used by some food companies and the artist can collect royalties via a licencing deal.

Foreign artists have successfully created well-known brand names. Superstars like Beyoncé, Rolling Stones, Aerosmith, Metallica, and many other well-known artists sell their own product lines. For example, perfumes, make-up, accessories, designer clothes will surely make up a significant portion of their income thanks to such licencing agreements. These examples are aimed at artists and musicians, but in practice the same principles apply to photographers and designers who use their name in professional activities and should also consider registering their name as a trademark.



KAROLINA ULLMAN
ATTORNEY AT LAW,
PARTNER

(+372) 66 76 444

KAROLINA.ULLMAN@NJORDLAW.EE