Trademarks: What is a Frappuccino, really?
December 7, 2016 | Mark Shaffer

I’ll fail to answer that question later. The U.S. Patent and Trademark Office (USPTO) grants and maintains trademarks. What is a trademark? USPTO lawyers helpfully tell us a “‘trademark’ protects the use of a word, name, symbol or device that is used in the trade of goods to identify the source of the goods, distinguishing the goods from those produced by another.” What?

In plain English, a Mark (a trademark) can be a word or phrase, a symbol, or a combination. It is intended to protect your company’s hard earned reputation by identifying your product as your product. Your company hires a lawyer when another company uses a similar Mark to identify a product in the same class (there are many) causing market confusion. A Mark is a tool to prevent another company from using your company’s reputation to sell its products or, worse, tainting your company’s reputation with their product.

The Mark system is pretty arcane, but, a few aspects of the system, other than my first name also being Mark, are kind of interesting. There are different kinds of Marks. Trademarks protect goods and products. Service Marks protect (surprise) service businesses. Trade Dress protects packaging. Don’t confuse these with Trade Name, which is your company DBA or fictitious name, registered with your State when your company name does not include your own name.

Back to defining Frappuccino . . . in 2013, Starbucks’ lawyers served the Exit 6 Pub and Brewery in Missouri with a “cease and desist” (stop it now, or else) letter. The lawyers asserted that Exit 6 misappropriated Starbucks’s “Frappuccino” coffee and milk drink, café services, and etc. trademark. I still don’t know what a Frappuccino is, but it seems Starbucks decided that Exit 6 created market confusion by selling a stout beer it called “Frappicino.”

We can argue about the likely market confusion between beer and coffee, bars and cafes, and spelling later. This legal event has much greater significance. Exit 6’s owner, Mr. Britton, sent Starbucks’ lawyers the best and funniest “stick it” letter ever written by a normal person to a lawyer. We offer it in its entirety. No commentary or editing would do it justice.
Dear Ms Owen Kramer

cc Mr Bucks

I represent Exit 6 Pub and Brewery LLC d/b/a “Exit 6”. I am writing in response to your letter dated 12/9/13 in regards to the “Frappuccino” (at risk of further lawsuits, heretofore known as “The F Word”) beer listed on Untappd. As you probably don’t know, Exit 6 is the proud owner of no trademarks including our own name much less than the name “F Word” and nothing about Exit 6 is incontestable.

Exit 6 has proudly sold at least 38 drinks in Cottleville MO and has a strong presence in St Charles county, a suburb 40 miles outside the St Louis metropolis. It has recently come to Exit 6 Pub and Brewerys attention that there were 3 check ins to the beer with a very similar name to the “F Word”. Unfortunately it was only similar to the F Word because we meant to call it the same thing. Lucky for us, we’re poor spelers.

I would like for both Ms Owen Kramer and Mr Bucks to rest assured we meant no deception, confusion, or mistaking in the naming of the beer F Word. We never thought that our beer drinking customers would have thought that the alcoholic beverage coming out of the tap would have actually been coffee from one of the many, many, many stores located a few blocks away. I guess that with there being a Starbucks on every corner of every block in every city that some people may think they could get a Starbucks at a local bar. So that was our mistake.

We want to be sure that Ms Owen Kramer and Mr Bucks know that Exit 6 and the 3 customers that checkeed into the beer known as the F Word feel just awful about calling a beer the F Word. We are bad people. We feel shame. But know this, Exit 6 has ceased and desisted all use of the F Word and there will be absolutely no further use of the F Word in the naming of any further Exit 6 beers. We tried to contact the website Untappd to tell them to remove the beer called F Word but it looks like you guys beat us to it. Those lawyer fees go a long way. We also promise to stop production of our “Starbucks-McDonalds-Coca Cola-Marlboro Honey Lager” for fear of further repercussions.

Furthermore, in an effort to remain in good standing with Starbucks and Mr Bucks in general, please find enclosed a check for the full amount of profit gained from the sale of those 3 beers. Please apply the enclosed $6,00 towards the legal fees Ms Owen Kramer received for her efforts in nabbing Exit 6 in our dastardly F Word naming practices. We realize Mr Bucks probably paid her more than Exit 6 made last year. We just want to help a business like Starbucks. Us small business owners need to stick together.