

UNITED STATES - STRIKER PREVAILS IN BATTLE OVER ATL'S BADDEST CHICKS

The Trademark Trial and Appeal Board (TTAB) refused to cancel the registration of Striker Records, Inc. for the mark ATL'S BADDEST CHICKS as used with "presentation of live show performances". *Littel Concepts, LLC v. Striker Records, Inc.*, Cancellation No. 92050431 (T.T.A.B. Dec. 27, 2010) [non-precedential].

Littel Concepts, LLC applied to register its mark ATL'S BADDEST CHICKS for, among other things, "entertainment production, in the nature of theatrical and concert productions." The U.S. Patent and Trademark Office (USPTO) denied registration on the ground that the mark applied for was confusingly similar to the mark covered by Striker's registration. Littel Concepts then petitioned to cancel Striker's registration on the grounds of priority of use, likelihood of confusion, and fraud.

Littel Concepts alleged its application was refused based on a likelihood of confusion with Striker's mark. The TTAB held Littel Concepts could not rely on the USPTO's refusal as a basis for standing because Littel Concepts did not make of record its application file – specifically those portions of the file that would establish its ownership of the application and the refusal thereof by the USPTO. Accordingly, Littel Concepts was required to establish standing on the basis of other evidence.

The only evidence of record of any alleged common-law rights owned by Littel Concepts was from Striker's registration file, which contained a concert poster submitted as a specimen of use. The poster listed the Littel Concepts logo, website, and telephone information. Littel Concepts alleged that it had common-law rights in the mark because it was the producer and promoter of the ATL'S BADDEST CHICKS concert advertised on the poster. The TTAB found, "charitably," that on this basis Littel Concepts had established standing to petition to cancel the registration.

Despite that finding, the TTAB noted that to prevail on a likelihood of confusion claim, Littel Concepts was required to prove it had prior rights in the mark and a likelihood of confusion existed. The Board held that Littel Concepts failed to meet this "more stringent standard" of ownership of prior rights because the only relevant evidence of record was the poster, which merely listed Littel Concepts as the source for more information about the concert. The poster did not show that Littel Concepts was the producer of the concert, nor did the poster establish that Littel Concepts was the owner of the mark or that it had any prior rights in the mark.

Without being able to prove ownership of or prior rights in the mark, Littel Concepts would not be able to show either likelihood of confusion or fraud. Accordingly, the TTAB denied the petition to cancel.

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