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BAR BULLETIN FOCUS: INTELLECTUAL PROPERTY LAW

What's All the Fuss About, "Hon"?

By C.J. Persson

A December 2010 *Baltimore Sun* article brought to light what some consider shrewd capitalism, wif underhanded exploitation and what an editorial on baltimoresun.com described as a betrayal of the registration of the word "HON" as a trademark on the principal register of the United States Patent a (USPTO). The record owner? Café Hon, Inc., the corporation affiliated with the restaurant known as the Hampden neighborhood of Baltimore City.

Why the angst? The word, "hon," is a notorious colloquialism of Baltimore residents used to address friend or stranger alike. It is also used as a descriptive noun for any one of the working class women Baltimore during the 1950s who wore cat's-eye glasses and a beehive hairdo (think John Waters's residents of Baltimore and public commentators, securing trademark rights based on a word of such symbolism is misappropriation. Adding to the public ire were steps taken by the corporation with res parties, including the Maryland Transit Administration, which indicated the trademark owner was trying commercial uses of the word "HON," not just those that infringed its rights.

Neither the common law nor federal registration of a trademark or service mark grants the owner the the word or words comprising the mark. Instead, the law grants the owner the exclusive right to use identifier. In other words, multiple, unrelated persons can use the same trademark or service mark s services are not so similar as to cause confusion among consumers. The more similar the goods a important are the distinctiveness, continuous use and registration of the owner's mark.

The level of protection against infringement afforded a mark is based on its "strength" – that is, the distinctiveness of the mark. That spectrum ranges from the very strong, "fanciful" marks to the very Falling in between are "arbitrary," "suggestive" and "descriptive" marks.

Incontestable status, a statutory presumption under Section 1065 of the Trademark Act of 1946 (the continuous uses of a registered mark in commerce beyond five consecutive years, is considered by indication that a mark is patently strong. In a February 2010 opposition proceeding, *Safer v. OMS Jr* Trademark Trial Appeals Board held that incontestability merely indicates that a mark is valid and an confusion is nonetheless appropriate. In that proceeding, despite the incontestable status of the op TTAB dismissed the opposition, partly on the basis that the opposer's mark was weak.

Although Denise Whiting, president of Café Hon, Inc., has apologized publicly for the corporation's its trademark rights, the registration of "HON" continues to irritate, if not bewilder, many in the public. mark seems to lack the commercial impression of a trademark. Not only does the mark comprise of but its size, location and dominance on the samples of use filed with the USPTO are indiscrete and ornamentation. At most, the strength of the trademark appears weak.

Absent successful cancellation action or other permissible challenge, the "HON" trademark registra properly maintained. In that case, the public will have to live under the shadow of the "HON" registra abandoned or sufficiently diluted. Even if the registration acquires incontestable status or becomes of fair use under Section 1115(b)(4) of the Act provides a viable defense for uses of the word "HON" mark.

As discussed in *Citrus Group v. Cadbury Beverages*, an infringement action before the U.S. District of Maryland in September 1991, even the use of the exact same words comprising a trademark in a national publicity campaign for competitive product can be permissible where the words are consist

colloquial meaning.

A USPTO record search shows that "HON" has been registered by Café Hon, Inc., as a trademark for clothing since May 2006, a service mark for restaurant services since July 2005, and a service mark since March 2007. On Jan. 20, 2011, a Combined Declaration of Use and Incontestability under Section 15 was filed with the USPTO for the "HON" restaurant service mark. None of the marks appears to be registered with the Secretary of State for the State of Maryland.

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