

**LEGAL UPDATES**

## Tiger King Trademark Troubles

Netflix's hit miniseries, "Tiger King: Murder, Mayhem and Madness," follows the story of a titular character, exotic animal breeder, and zoo operator, Joseph Maldonado-Passage (aka, "Joe Exotic"), and his battle against perceived rival Carol Baskin and her nonprofit animal sanctuary, Big Cat Rescue ("BCR").

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Netflix's hit miniseries, "Tiger King: Murder, Mayhem and Madness," follows the story of a titular character, exotic animal breeder, and zoo operator, Joseph Maldonado-Passage (aka, "Joe Exotic"), and his battle against perceived rival Carol Baskin and her nonprofit animal sanctuary, Big Cat Rescue ("BCR"). The series guides viewers through Joe's tumultuous efforts to bring down BCR, including an arson investigation, murder-for-hire scheme, animal abuse allegations and plenty of other legal and social drama. In the end, it is Joe Exotic who is brought down spectacularly by, among other outrageous conduct, his spiteful appropriation of the BCR trademark. His sparkly demise harbors a lesson for all about what NOT to do when using trademarks for competitive advantage.

### Mr. Exotic Goes to War Against a Nonprofit Animal Sanctuary

Joe bred and performed with *big cats* in his for-profit zoo. Carol operated a non-profit sanctuary for abused and abandoned  animals known by the Big Cat Rescue trademark design seen here.

Whipped on by the hot market and close-knit competitive world of big cat breeding and ownership, Joe did what any good businessman of reasonable mind may have done in his position: he accused Carol of killing her ex-husband.

Carol, a self-proclaimed crusader against abusive treatment of these majestic beasts, openly criticized Joe's operations as abusive and exploitive.

Joe wanted to get back at Carol.

### Lions, Tigers and Trademark Infringement, Oh My!

Do you know how much power you have when your business comes up first when entered into Google? Joe did. He decided to steal that power from BCR and turn it against his archrival.

Joe added the term "ENTERTAINMENT" to his nemesis' "BIG CAT RESCUE" and adopted BIG CAT RESCUE ENTERTAINMENT using almost an identical design to identify and promote his own exotic animal breeding services – the exact type of services Carol claimed her animal sanctuary rescued animals from. After years of online skirmishes through which Joe tried to disrupt his rival's online presence, goodwill, and reputation, it was the adoption of an almost identical mark to identify his own services that finally brought Joe and the dispute with Carol to court. But not in the way Joe imagined.



Alleging that Joe's use of the minimally modified BCR mark confused consumers into thinking his for-profit zoo had a connection with her non-profit sanctuary, Carol sued Joe, for trademark infringement. Joe lost. The final judgment against him included an injunction permanently stopping Joe from all use of the BIG CAT RESCUE trademark (or any other confusingly similar trademarks, like his BIG CAT RESCUE ENTERTAINMENT mark), and paying attorney's fees and damages to Carol's Big Cat Rescue nonprofit to the tune of \$953,000.

Barging its way into the homes of an entertainment-hungry captive audience sheltering in place, the Tiger King drama illustrates common trademark misconceptions and the potential trouble and risk accompanying unauthorized misuse of another's trademark.

## The Trademark Take-Away

Trademarks function to identify the source of goods or services of the trademark owner and distinguish them from similar goods and services of other sources. Trademark rights, when protected through registration and proper use, enable the trademark owner to stop others from using similar marks that are likely to cause confusion in the marketplace, and to assure purchasers of the standard of quality of the goods or services they are purchasing.

Selecting a trademark is not always easy, but do learn from Joe's mistake: do NOT use a competitor's trademark to identify your own goods and services. A common mistaken belief is that a mark must be identical to another mark to be infringing. In fact, marks need only to be sufficiently similar so that, when considered with other factors such as the nature of the goods, consumer confusion occurs or is likely to occur. A mark can remain sufficiently similar to another mark to cause confusion even with some changed vowels, creative spelling, or adding or removing a word (like Joe adding ENTERTAINMENT to BCR's mark).

When a trademark is selected, work with knowledgeable trademark counsel to review the mark against registrability requirements and conduct searches of existing trademark registers to determine if similar marks are already registered or in use. If a mark meets requirements and is clear of conflict, file for protection of the trademark by registration. The registration process can take more than year and cost thousands of dollars, but the rights gained, including the ability to exclude others in the marketplace from using similar marks for similar or related goods or services, are invaluable compared to the risk of business disruption by loss of use of your mark, or the costs and stress of defending a trademark infringement lawsuit.

Recent Supreme Court decisions underscore the increasingly critical role trademarks play as tools for business owners in a growing online world. Unlike Joe, business owners should select, protect, and use distinctive marks, and work with counsel to clear registrable trademarks prior to adoption and use.

Although trademark registration is not required to create or maintain geographically limited common law trademark rights in the United States, registration with the United States Patent and Trademark Office provides presumptive evidence of ownership and the exclusive right to use the trademark throughout the United States in connection with the goods and services identified in the registration. As shown by Carol Baskin, trademark rights can serve as the basis for shutting down the use of confusingly similar trademark use. Registration is essential for marks used in web-based commerce or advertising available across state boundaries, and registered trademarks are assets that may be used as collateral for obtaining loans or entering into business transactions.

While it may not have stopped him from starring in his own infamous Netflix megahit, Joe's outcome in court in his vendetta with Carol may have ended differently if he had consulted with counsel before deciding to usurp the BIG CAT RESCUE mark. Search and clearance of a trademark *before* commencing use is a relatively low cost alternative to the fees of defending a lawsuit, loss of the ability to use a mark, or potential damages and/or disgorgement of profits for infringement of another's trademark.

Don't be the next Tiger King. Talk to your trademark attorney when selecting your trademarks and before commencing use of a trademark.



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