
unauthorized use of a trademark

Posted by Bob - 2010/03/08 23:04

An auction company is auctioning off confiscated property collected from the IRS and the state taxing agencies and using the logo of the company which had its property seized to promote the auction. The auction company has been notified of the unauthorized use of the trademark and says that they cant do anything about it as the flyers already went out. My question is, what can the trademark owner sue for if the auction proceeds actually go to repay his debt? What are the damages to the trademark owner?

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Re:unauthorized use of a trademark

Posted by Dingo - 2010/03/11 21:15

Sound like "fair use" especially if the auction proceeds helped he trademark owner out of his debt. I dont thing there is much of a claim.

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Re:unauthorized use of a trademark

Posted by jano - 2010/03/16 20:59

Trademark fair use is defined in 15 U.S.C. 1115(b). Under this section, there are nine listed defenses to trademark infringement, but the most important one for purposes of this discussion is (b)(4), the so-called fair use defense to incontestability. Under 15 U.S.C. 1115(b)(4), a mark's incontestable status shall be subject to an alleged infringer's defense

"hat the use of the name, term, or device charged to be an infringement is a use, otherwise than as a mark, of the party's individual name in his own business, or of the individual name of anyone in privity with such party, or of a term or device which is descriptive of and used fairly and in good faith only to describe the goods or services of such party, or their geographic origin;"

The fair use doctrine is somewhat analogous to the fair use doctrine of copyright law, which considers whether a defendant's use of copyrighted material is reasonable despite not having the copyright owner's permission to use the work, or is at least unlikely to negatively affect the copyright owner's economic interest in his copyright.

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Posted by Brian - 2010/03/21 19:47

The good faith fair use defense . It only applies if the person who copied material reasonably believed that what he or she did was a fair use - as would likely be the case if you followed this Policy. If you qualify for this defense, it makes you a very poor prospect for a lawsuit. On the other hand, if you disregard sound advice about fair use, a court would be free to award the highest level of damages available. This makes someone who ignores policies a handsome target for a lawsuit.

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