



Katy Perry Hits Roadblock in Obtaining Trademark Registration for Left Shark

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Singer Katy Perry's attempt to register the term "Left Shark"—the name of her dancing companion during the 2015 Super Bowl Halftime Show—with the United States Patent and Trademark Office ("USPTO") has been delayed, while her application to register the Left Shark design has been denied.

Perry, through her company Killer Queen, LLC, applied to register a drawing of the blue-and-white fish, but the Trademark Examiner denied the request because the mark "identifies only a particular character, it does not function as a service mark to identify and distinguish applicant's services from those of others and to indicate the source of applicant's services." The Trademark Examiner went on to state "[a] design of a character is registerable as a service mark only where the record shows that it is used in a manner that would be perceived by customers as identifying and distinguishing the services in addition to identifying the character." Perry had failed to put forth any evidence in her application that the Left Shark logo would be used as an identifiable source of her products.

Registration of the Left Shark logo was also refused because the submitted drawing of Left Shark differed significantly from the use of Left Shark in commerce. The specimen used to exemplify Left Shark's use in commerce was a photograph of Perry's costumed dancer at the Super Bowl—the drawing submitted for registration, however, was significantly different in terms of appearance. The Trademark Examiner noted that a specimen must be a "substantially exact representation" of the design sought to be registered.

In addition to the Left Shark design, Perry applied to register the "Left Shark" wordmark. While the application was not denied, the Trademark Examiner held that Perry has to more specifically set forth the goods for which the mark will be used. Going forward, the application must be revised to more specifically define the terms figurines, costumes, and action figures. If Perry's attorneys are able to meet the USPTO's requirements for specificity on these terms, the "Left Shark" wordmark may be accepted for registration.

Katy Perry's trademark registration attempts demonstrate two very important requirements for those who seek to obtain a federally registered trademark. The submitted example of the use of the mark in commerce must be substantially identical to the applied-for mark and the services upon which the mark will be used must be set forth with the requisite specificity. To use Perry's application as an example, simply stating "figurines" is not adequate to meet the USPTO's requirements; the type of figurine (i.e. china, crystal, glass, etc.) must be defined.

It is also important for trademark seekers to keep in mind that, when setting forth the services on which a mark is used, the mark must be actually being used for all of those services.

Perry's attorneys can now revise the word mark application to meet the USPTO's requirements, and Left Shark may be dancing once again.

If your institution has questions or concerns about this topic and you would like further information, please email Karen I. Levin at klevin@cullenanddykman.com or Ariel E. Ronneburger at aronneburger@cullenanddykman.com.