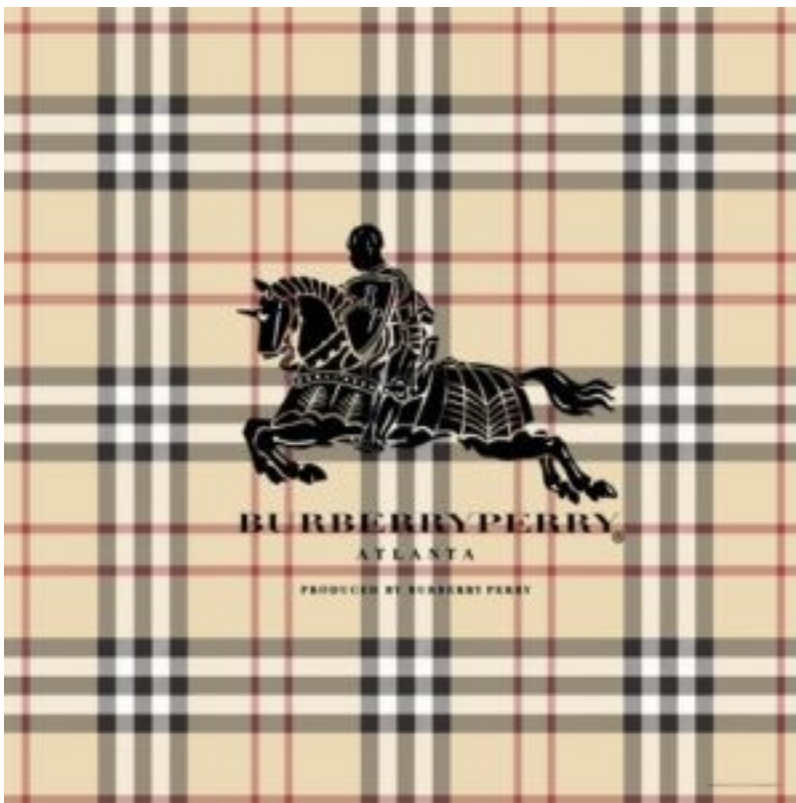


# Brand Names as Stage Names – Tribute or Infringement?

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by Bruce R. Ewing



While all the world might be a stage, the famous U.K. fashion house Burberry Limited has now established that none of its players – except Burberry – has the right in the U.S. to use the famous Burberry trademark as a stage name. That's the upshot of a decision issued by a Manhattan federal court in mid-August in the case of *Burberry*

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## Related Capabilities

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*Limited v. Moise*, No. 1:16-cv-05943-ER-GWG.

Perry Paris Moise is an American hip hop producer and singer who decided, inexplicably, to adopt the stage name “Burberry Perry,” and he also decided to use that name as the title for his self-titled EP issued in May 2016. It is not at all uncommon for musical artists to associate themselves, whether in videos, photos or song lyrics, with well-known fashion brands. After all, Jennifer Lopez had a smash hit with “Louboutins,” and, according to a 2013 compendium, there are at least 28 rap songs named after clothing brands. So, then, what’s the big deal with “Burberry Perry”?

Well for starters, there aren't many artists who have adopted a famous brand name as their stage name, and there are even fewer that have decided to use a trademark like Burberry, whose use dates back to 1856 in the U.K. and is substantially unique. Making matters worse for Moise, his album cover used a variation of the famous Burberry plaid print and its equestrian logo, which could only be indicative of an intent to associate himself with the fashion house whose name he'd appropriated for himself. It's therefore no surprise that Burberry sued, and it's also no surprise that Moise, rather than defend the case, defaulted and quickly announced that he had changed his stage name to "The Good Perry." (One wonders what the well-known country music act "The Band Perry" thinks of this new name, but that would be a blog post for another day.)

So does this *Burberry* decision mean that any performer who picks a stage name that happens to be the same as or similar to a well-known trademark is out of luck? Not necessarily. Those of us of a certain age will recall the 1991 film "New Jack City" and its song "Lyrics 2 the Rhythm," which was recorded by the singer Tamara Hutchinson, who used the stage name "Essence," and was produced by Joseph Saddler, better known as Grand Master Flash. Unfortunately for Saddler and Ms. Hutchinson, her stage name drew the wrath of Essence Communications, publisher of the well-known *Essence* magazine. Essence Communications sued Saddler and Ms. Hutchinson seeking to stop her from using "Essence" as a stage name, but that effort was rejected by the same New York court that ruled in favor of Burberry a few weeks ago. Why? Primarily because the court found that "essence" was a word used as all or part of a trademark by many others, and that Ms. Hutchinson had made no effort to associate herself with the magazine of the same name. See *Hutchinson v. Essence Communications*, 769 F. Supp. 541 (S.D.N.Y. 1991).

So, Ms. Hutchinson won her case because the facts concerning her adoption and use of "Essence" were more favorable to her than the brand owner. Unfortunately for Ms. Hutchinson, notwithstanding that she won this battle, no other songs by "Essence" recorded after 1991 turn up in online searches, so it would appear that Essence Communications wound up winning the war. Perhaps "The Good Perry" will find that his new name is a harbinger of greater success in the music business.