

FEYONCÉ: Poking the Beyhive

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by Jake Holt



You probably have a friend who's justifiably obsessed with all things Beyoncé (this author might be that friend). You might also have a friend who's engaged (a fiancé). When the two intersect, you've got a FEYONCÉ. Get it? Check Instagram -- it's a thing. But did you know all that swag doesn't come from Queen Bey herself?

Last week, a federal judge for the Southern District of New York

refused to grant summary judgment on Beyoncé's claims of trademark infringement, unfair competition, and dilution regarding a line of third party FEYONCÉ merchandise. The individual defendants and their company, Feyonce, Inc., have sold FEYONCÉ apparel and other goods via feyonceshop.com and a related Etsy store since 2016. Though the subject mark plainly references Beyoncé, the court could not conclude that confusion was likely as a matter of law because: "While Defendants clearly selected their mark because of its association with Plaintiff's mark, it is not at all clear that they hoped to capitalize on confusion between the products." *Knowles-Carter, et al., v. Feyonce, Inc. et al.*, 16-CV-2532 (SDNY Sep. 30, 2018).

To succeed on a claim for trademark infringement, a plaintiff must prove that the defendant's activities create a likelihood of confusion with the plaintiff's earlier, protectable mark. Here, the issue is whether the play on words in the FEYONCÉ mark is sufficient to prevent that confusion. "Evidence in the record indicates that many purchasers of FEYONCÉ products are, in fact, engaged ..." and hence, not confused about the mark itself. See *id.* The question of confusion may then turn on whether consumers are likely to believe that Beyoncé has otherwise "approved" or "sponsored"

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the FEYONCÉ gear.

In the alternative, Beyoncé's team has asserted claims of dilution by blurring. The law of dilution permits owners of famous trademarks to prevent others from using identical or very similar trademarks even if there is no likelihood of confusion. Dilution by blurring (as opposed to dilution by tarnishment) is defined as an "association arising from the similarity between a mark or trade name and a famous mark that harms the reputation of the famous mark." 15 U.S.C. § 1125(c)(2)(C). The court seems to take judicial notice of Beyoncé's fame -- a recent lyric says it best: "No need to ask, you heard about us." However, summary judgment was denied based on the remaining question of whether the use of FEYONCÉ actually harms the reputation, i.e., impairs the distinctiveness of the BEYONCÉ mark. Or, to the contrary, does the obvious pun actually increase public recognition and promote the reputation of the BEYONCÉ mark?

We are monitoring the case for further developments, or a royal decree from Queen Bey.