



Band Names: Easy to Register but Difficult to Own

In 1961, James Rick, an experienced manager and music promoter, discovered four young Doo-Wop singers performing in Brooklyn. Impressed by their commercial potential, Rick entered into a management relationship with the group and named the group “Vito and the Salutations.” Rick also took the step of registering the group’s name as a U.S. trademark, listing himself as the owner.

The group enjoyed early success but underwent personnel changes over time. Between the 1960s and 1970s approximately twenty-two different individuals had performed in the music group. Throughout these changes, Rick continued to manage the group, oversee bookings and promotion, and maintain continuity in the use of the name. In 1980, a second management agreement was executed by the then-current group members and Rick. Notably, neither the original nor the later agreement addressed ownership of the band name or trademark rights.

Soon thereafter, a dispute arose. Charles Garone persuaded certain performers that he should manage the group and began booking performances under the name Vito and the Salutations without Rick’s involvement. Rick responded by filing a trademark infringement action against Garone and the performers. The dispute centered on who actually owned and controlled the mark once relationships and management arrangements changed. More about this later.

This Circular uses Rick’s experience as a cautionary example. It explains how to register a band name as a U.S. trademark and, just as importantly, how to avoid the ownership disputes that can arise when trademark rights are not clearly defined in writing.

HOW TO REGISTER A BAND NAME AS A U.S. TRADEMARK

The rules for selecting and searching a band name, filing a trademark application, and using the mark in commerce are generally the same as for other trademarks. Follow these steps:

Step 1: Perform a Search

You thought of a catchy name, and you think it’s original. Nonetheless, do your due diligence. Search the United States Patent and Trademark Office (“USPTO”) database, the Internet, and anywhere else you can think of. Have alternative names in case your best choice has already been used. Review search approaches [here](#).

Step 2: Determine Ownership of the trademark

Determine who the owner of your new trademark will be. There are various choices. All the members together, the lead band member or another member, the band’s corporate entity, if there is one, or the band’s manager (individual or corporate entity). There is no right or wrong choice. What you choose will depend upon the band structure and management as well as the long term strategic plans for the band’s success. Keep in mind that the owner must be using the trademark in commerce, that is selling or offering the band’s services to the public, to claim trademark rights. Also, it is extremely important to have a written agreement that spells out who retains ownership should the band dissolve, change members, or management. More about this later.

Step 3: Select the Goods and Services that the Mark Will Identify

A trademark application must identify the specific goods or services with which the band name is used in commerce. For most musical groups, this will include live musical performances or entertainment, which are considered services. The trademark application may also include sound recordings, downloadable music, clothing, posters, and other merchandise marked with the band’s name. It is important to choose these categories carefully because trademark protection extends only to the goods and services listed in the application and supported by actual use or a bona fide intent to use.

Also, each class of goods and services incurs a \$350 USPTO filing fee, assuming you use the descriptions in the USPTO [Trademark ID Manual](#). If you draft your own description of goods and services, the filing fee rises to \$550 per class.

Step 4: Determine the Filing Basis

The applicant must also determine the proper filing basis for the application. If the band name is already being used in commerce in connection with the listed services or goods, the application may be filed based on actual use (referred to as a Section 1(a) application). If the band is not yet using the name in commerce, but has a bona fide intention to do so, it may file based on intent to use. This distinction matters because it affects what must be submitted with the application. An intent-to-use trademark application will not require the attachment of examples (“specimens”) proving use in commerce. Rather, when the trademark application is “allowed” you will have six months to file a Statement of Use along with the specimens. Five six-month extensions are also available for additional fees.

Step 5: File the Application in the Name of the Correct Owner

Once the owner, goods and services, and filing basis have been determined, the application must be filed in the name of the correct owner. This is especially important for band names because disputes often arise later over who actually controls the name or trademark. If the application is filed in the name of the wrong party, the registration may be vulnerable to challenge or even void from the outset. Care should be taken to ensure that the identified applicant is the same person or entity that controls the nature and quality of the services or goods offered under the band name.

Successfully completing these steps will place a band in a strong position to secure federal trademark protection. However, registration alone does not resolve the most common—and most expensive—problem that arises with band names: who actually owns the mark when relationships change. As the story of James Rick illustrates, a trademark can be properly registered and still become the subject of bitter dispute if ownership and control are not clearly addressed in writing from the outset.

In practice, there is a final step that is just as important as filing the application itself, that is documenting ownership and control of the band name in a clear written agreement.

OWNERSHIP ISSUES: YOU WILL NEED A SOLID WRITTEN AGREEMENT

The dispute involving James Rick arose because no agreement clearly addressed who owned the name or who controlled its use once the group’s membership and management changed. Rick learned the hard way that while a band name may be easy to register, ownership of that name can become far more difficult to determine when disputes arise. For that reason, members of a musical group should enter into a clear written agreement at the outset addressing ownership of the band name and related trademark rights. Such an agreement should specify who owns the mark, who may use it, and what happens if the band breaks up, changes members, or continues under the control of fewer than all of the original members. Without a solid written agreement, ownership disputes can quickly become expensive, disruptive, and difficult to resolve.

Back to the Rick drama. Rick ultimately prevailed. The court held that Rick, not the departing performers, owned the registered trademark because he exercised continuing control over the group and was primarily responsible for the consistent commercial use of the name. The case demonstrates that ownership of a band name does not automatically vest in the performers, even where one performer's name appears in the mark. Control matters. Courts may consider who selected the name, who controlled the quality and continuity of performances, who handled promotion and bookings, and who used the mark consistently in commerce over time. The case also underscores why a written agreement addressing ownership and post-breakup rights is so important; had those issues been resolved at the outset, years of litigation might have been avoided.

In summary, a well-drafted agreement should address more than ownership in name only. It should:

- state whether the band name is owned jointly by the members, by a single member, or by a separate business entity;
- define who has authority to control use of the mark;
- explain what happens if a member leaves, a new member joins, the band stops performing, or competing groups claim the right to use the name; and
- address who may file trademark applications, pay related expenses, and control licensing, merchandising, and enforcement of the band's trademark rights.

Registering a band name as a trademark may seem straightforward, but the greater challenge often lies in determining who owns the name and who may continue using it over time. Bands that take the time to clear the name, identify the correct owner, select the proper goods and services, choose the appropriate filing basis, and document ownership and control in a clear written agreement will be far better positioned if disputes arise later.

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