

What the Pattie Gonia Trademark Infringement Lawsuit Can Teach Us About Current Enforcement Trends

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Patagonia sign in front of the store located in downtown Pasadena. Credit: Sundry Photography/Adobe Stock

A trademark infringement dispute between the outdoor apparel brand Patagonia and the drag queen Pattie Gonia may not make it to a jury after the U.S. District Court for the Central District of California referred the matter to mediation on Monday, but experts say there's still a lot to learn from what the filing has to say about current trends in trademark enforcement.

Patagonia [sued](#) the Oregon-based performer after Pattie Gonia filed a trademark application for her stage name. The company asked the court to award nominal damages of \$1, plus attorney fees and an order preventing the drag queen from continuing to infringe and profit from her name. According to the complaint, in 2022, the parties came to an agreement wherein Patagonia didn't object to a partnership between Pattie Gonia and the water bottle manufacturer Hydroflask, provided Pattie Gonia didn't use Patagonia's logos or the 'Pattie Gonia' name on products. Pattie Gonia then went on to sell Pattie Gonia-branded merchandise using modified versions of the Patagonia marks.

Pattie Gonia [denied the infringement allegations](#), and court filings indicate that the matter has been referred [to mediation](#). Meanwhile, while experts are split on whether a lawsuit was warranted, they agree that the case is emblematic of larger trends in how brand owners are currently pursuing infringement claims.

"There's a general trend of brand holders being much more careful these days about protecting their brand, especially with all of the different social media outlets," Saul Ewing partner Mark Mizrahi told Law.com in a video interview.

Mizrahi compared a trademark owner's duty to police to being a hockey goalie.

"The pucks come flying aggressively, all the time, and you always have to look at every single source of media to make sure that you know that you're protecting and policing the brand properly," Mizrahi said. "I think that the brand holders are finally catching up with that necessity of really policing and protecting the brand, because there are just so many different ways in which the brand can be either used, abused or diluted."

According to Mizrahi, by allowing counterfeits to exist at all, a brand automatically weakens its own marks. Beyond that, though, brands also have to monitor "encroachments," or situations where third parties use elements of a mark that could fall under a likelihood of confusion test.

"Even if you're willing to tolerate some of those third-party uses, because you don't think they're necessarily going to hurt your business, the more you allow in, the more diluted your mark becomes, and therefore the more difficult it is to enforce," Mizrahi said. Furthermore, if Patagonia fails to act swiftly, potential infringers may prevail on a laches defense by arguing the brand sat on its rights for too long without enforcing them. Indeed, Pattie Gonia's answer to Patagonia's complaint argued that the lawsuit was moot because of the rule of laches, among other reasons.

However, experts disagreed on how far rights owners should go to defend a mark. Some even expressed doubt that taking Pattie Gonia to court for trademark infringement was the right move.

"It seems to me that an opposition was warranted; doing it for infringement was not," Harvard trademark professor Rebecca Tushnet said. "But the broader conversation is that Patagonia, the store, like many trademark owners, basically wants to get off the hook for the speech suppression, pursuing a drag queen by saying, 'Oh, it's not our fault. We don't want to be mean. It's just trademark law forces us to do it.'"

According to Tushnet, "That's just a really incredibly successful psyop because that's not what trademark law's duty to police is about. It's not about policing drag queens or distinguishable variations." Rather, Patagonia's duty to police applies to things like ensuring licensees are complying with quality control standards and going after counterfeit products.

Sarah Fackrell, a Chicago-Kent College of Law professor, said she has observed a heightened sensitivity to the duty to police playing out across the world of trademark law.

"As far as I can tell, you know, this idea that you have a duty to sue anyone at all is not true, except to the extent that it comes into issues like laches," Fackrell said. "This idea that you have to go and sue everyone who infringes your IP ... there is no basis for that that I can find anywhere."

According to Fackrell, this phenomenon is also closely tied to the increasing prevalence of [Schedule A](#) IP infringement litigation. Schedule A claims originally developed as a cost-effective way for brand owners to combat trademark infringement by way of bootleg products sold through online marketplaces. The litigation tactic is most common in the Northern District of Illinois but has sparked criticism as exponentially growing case counts have put pressure on the Chicago bench.

"The cycles of really, really aggressive enforcement and suppression do tend to come and go, and we might be on an upswing. But, I think it's also just the case that tactics tend to change over time," Tushnet said. "So, it really depends on a whole lot of things, including what's going on outside of IP and what lawyers are spending their time on."

In the end, though, Tushnet said that given that drag names tend to be based on jokes and puns, it was only a matter of time until a lawsuit like this was filed.

"I think one thing that probably isn't getting said enough is that people are a lot more capable of making distinctions than trademark lawsuits tend to claim," Tushnet said. "And actually, we're pretty good at making distinctions between Patagonia the region, Patagonia the retailer, and Pattie Gonia the drag queen."