COWAN LIEBOWITZ & LATMAN

On My Mind Blog

Monkey Business (and Other Animal Non-Rights)

May 8, 2020

By William M. Borchard

Many of us are looking for humor to divert our attention from Coronavirus cabin fever.

We are reminded of two cases in which animals—respectively a monkey and a cat—were held not to have ownership rights in intellectual property. It is curious that these rights were seriously asserted in the first place, and that they were dealt with in a semi-serious manner in the second place.

***1. Naruto v. Slater*, 888 F.3d 418 (9th Circuit 2018)**

Naruto, a seven-year-old crested macaque monkey in Indonesia, came across a camera left unattended by wildlife photographer David Slater. He took several photographs of himself, and Mr. Slater arranged for these photos to be published in a Monkey Selfies book.

People for the Ethical Treatment of Animals (PETA) sued the publishers for copyright infringement as a "next friend" on behalf of Naruto. A next friend must show that the litigant is unable to litigate himself or herself, and that the next friend has a significant relationship with, and is truly dedicated to the best interests of, the litigant.

© 2020 Cowan, Liebowitz & Latman, P.C. All rights reserved. | www.cll.com

The U.S. District Court for the Northern District of California dismissed the case. The Court held that Naruto (and his next friend) failed to establish statutory standing under either Article III of the U.S. Constitution or under the Copyright Act.

PETA appealed. The U.S. Court of Appeals for the Ninth Circuit affirmed the dismissal. The Court held that PETA lacked standing to bring the case as Naruto's next friend because there is no authorization for "next friend" lawsuits brought on behalf of animals.

Nevertheless, the Court ruled that Nartuo himself had standing to bring this suit as a "case or controversy" under Article III of the U.S. Constitution. The Court followed *Cetacean Community v. Bush*, 386 F.3d 1169 (9th Cir. 2004) in which Article III standing had been granted to whales, dolphins, and porpoises. Although the Naruto Court believed that *Cetacean* had been wrongly decided, it viewed that case a binding precedent.

This did not end the matter because *Cetacean* had also held that, if an Act of Congress does not plainly state that animals have statutory standing to sue under that Act, animals do not have statutory standing under that Act. The Copyright Act does not expressly authorize animals to file copyright infringement suits.

Therefore, in upholding the dismissal, the Court held that Naruto — and, more broadly, all animals other than humans -- lack statutory standing to sue under the Copyright Act.

Pursuant to this ruling, we now can show you how we imagine Naruto would look during the coronavirus pandemic.

***2. Morgan Stanley v. Meow*, Claim No. FA0604000671304 (National Arbitration Forum 2006) (CLL represented Morgan Stanley in this proceeding)**

The domain name <mymorganstanleyplatinum.com> was registered in the name of an unnamed cat. Morgan Stanley, the famous investment banking and financial services firm, is the owner of the MORGAN STANLEY family of marks and it offers credit cards under the name "Platinum."

Morgan Stanley brought this arbitration proceeding to have the domain name transferred to it. The proceeding was defended by Mr. Woods (a human) who claimed that he was allowed to use the domain name to conduct seminars for senior management of small and medium sized businesses regarding failures by well-known companies to register obvious domain names.

The arbitrator held that this was not a bona fide offering of goods because there was no reason actually to register such domain names in order to discuss such failures to register.

© 2020 Cowan, Liebowitz & Latman, P.C. All rights reserved. | www.cll.com

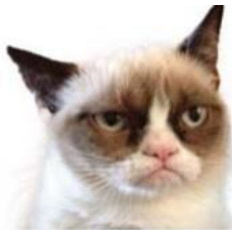
Further, the arbitrator held that the registration was made and being used in bad faith. A domesticated common cat cannot speak or read or write. The arbitrator mused that this meant that either the registrant was a cat from outer space with something to hide (indicative of bad faith behavior) or the assertion that the registrant was a cat was incorrect (an attempt to mislead).

Accordingly, the arbitrator ordered the domain name transferred to Morgan Stanley.

Author's Note: We have previously written about other cases involving asserted animal rights:

In A Trademark Got His Goat - But He Had No Legal Standing, we wrote about a failed attempt by a human to assert standing to cancel the registration of a trademark depicting "goats on a roof of grass" for restaurant services. The petitioner unsuccessfully argued that the mark was demeaning to goats.

In a Food Industry Update, we also wrote about several somewhat more successful cases brought by a company formed to exploit rights related to a cat named Tarder Sauce which was known as GRUMPY CAT.



For further information, contact William M. Borchard or your CLL attorney.

William M. Borchard

Counsel

Email | 212.790.9290

Bill advises on domestic and international trademark matters at the highest level. His practice consists of counseling clients and handling domestic and international trademark and copyright matters including clearance, registration, proper use, licensing, contested administrative proceedings and infringement claims.

© 2020 Cowan, Liebowitz & Latman, P.C. All rights reserved. | www.cll.com