

Taco Bell Scores a Win Over TACO TUESDAY™

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by Brok Humbert

When Taco Bell announced its intention to eliminate all exclusive trademark rights in the phrase TACO TUESDAY, it invoked the Declaration of Independence, claiming that any restriction on the right to use it “violates an American ideal: ‘the pursuit of happiness.’”

Though the fast-food giant’s most recent victories are perhaps smaller in scale than winning the Revolutionary War, it certainly had reason to celebrate after successfully cancelling another trademark registration for the popular phrase.

In May 2013, Yum! Brands’ subsidiary Taco Bell filed a number of petitions before the Trademark Trial and Appeal Board (“T.T.A.B.”) to cancel third-party registrations for TACO TUESDAY in connection with restaurant services. Trademark registrations are not absolute, but provide a presumptively exclusive right to use a trademark in connection with the registered good and services. In its petitions, Taco Bell overtly stated it did not seek monetary damages (which the T.T.A.B. does not have the authority to award anyway), but rather that no one party should have an exclusive right to use TACO TUESDAY: “[a] win for Taco Bell [] is a win for all.” In addition to these legal filings, the company began an extensive PR campaign, issuing press releases and releasing a commercial starring LeBron James where each of his attempts to say TACO TUESDAY is “bleeped.”

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The fast-food company hinged its petitions on the principle that no party is entitled to a trademark registration for words or phrases that are generic for specific goods or services. In other words, because consumers understand the phrase TACO TUESDAY to refer to “promotions, deals, coupons, and other incentives for purchasing tacos and related products on Tuesdays,” no single restaurant or food provider should own the exclusive right to use it. Even before Taco Bell began its taco crusade, the T.T.A.B. took a similar position in ruling that the phrase cannot serve as a trademark for beer because it is so widely used—see our January 2023 article [Taco Tuesday: It’s a Tasty Cultural Phenomenon Not a Trademark](#).

Unlike the prior decision by the T.T.A.B., however, Taco Bell’s petitions never reached the ruling stage. The company’s primary targets were Wyoming-based Spicy Seasonings, LLC (owner of the Mexican food chain Taco John’s) and New Jersey-based Gregory’s Restaurant & Bar. Each owned registrations for TACO TUESDAY in connection with restaurant services, with the latter owning the right to use the mark in New Jersey, and the former in the other 49 states. Rather than engage in a costly fight with Taco Bell before the T.T.A.B., and potentially the court of public opinion, Spicy Seasonings [voluntarily surrendered its registration on July 18, 2023](#).

On October 20, 2023, Gregory's followed suit and surrendered its registration for TACO TUESDAY. As a result, Taco Bell has presumably ended its fight to abolish exclusive rights in the phrase, which according to the company would have been the equivalent of "depriving the world of sunshine itself." Such a victory illustrates not only the vulnerability of common phrases as trademarks, but also the importance of the non-legal side of trademark challenges—Taco Bell appears to have spared no expense in its PR campaign, which may have played an important role in inducing Spicy Seasoning and Gregory's to surrender their registrations.