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# Getting Served: The Death of Vampire Slayer and The Birth of Undead Party Crasher

The one time I had a dream of getting served it went this way: A Clown Shoes tasting is winding up at Wolfgang Puck's Pizzeria and Cucina at the MGM Grand Casino in Detroit. I am chatting with some folks about Ozzie Guillen and his views on illegal immigration. From the shadows of a booth a kid I haven't noticed all night stands up, tips his flat brimmed Tigers cap, looks down at my faded Nike's and says "Hey Clown Shoes Guy, hope you can dance in them sneakers," before serving me thoroughly with a dazzling array of Detroit Style step dance moves.

The one time I really got served it went differently. Machat and Associates initially delivered the papers for case number 13-03568 in The Central District of California to Mercury Brewing, as well as to Somerville Beer Company and Frosty Knuckle Brewing Company. As the case was based on Clown Shoes Beers' use of the name Vampire Slayer, none of those folks should have been included in the law suit. We raised our hands and Clown Shoes Beer was promptly served, though the plaintiffs refused to remove the other breweries from the suit.

Bottom line? Vampire Brands and TI Beverage Group, connected companies out of California that primarily market vampire themed wine, were suing us. They came to market six months after Vampire Slayer began distribution with a beer made in Belgium called Vampire Pale Ale, but they filed a trademark application prior to our distribution. Their position was that our use of the name Vampire Slayer was harming their ability to sell Vampire Pale Ale, literally costing them money.

Here are a few nuggets from the plaintiffs' demands in the law suit:

1. The court should rule Clown Shoes unfairly competed with Vampire Brands and infringed on their trademarks, including Vampire, Vampyre, Vampire Vineyards, Chateau du Vampire, Dracula and others.
2. The court should "order that the Defendants' ill-gotten gains and all sales proceeds wrongfully acquired by Defendants by means of Defendants wrongful use of Plaintiffs' trademarks and their support of such acts of unfair competition and false advertising be turned over to Plaintiffs along with interest.
3. The court should award an amount to be determined at trial but at least an amount equivalent to treble the amount of Defendants' illicit profits or Plaintiffs' lost profits, whichever is greater.
4. The court award judgment against the Defendants for the full costs of this action, including attorney's fees reasonably incurred by Plaintiffs.

Wow. A phone call or a cease and desist letter are what would be a typical first salvo. But it turns out one of the partners of Vampire Brands , Michael Machat, is also the lawyer for the plaintiff, as he is a patent and trademark attorney. Perhaps this explains the aggressive approach.

At the heart of the suit, we learned after seeking counsel, is whether or not a likelihood of brand confusion exists. Our position was that there couldn't be much confusion between the two brands. The beers come from different countries, with ours being made in the USA and theirs in Belgium. This means they will end up in different sections of any beer store or on any beer list. Vampire Pale Ale embraces vampires in name and imagery, whereas Vampire Slayer does the opposite. Clown Shoes is the primary name of our beer, whereas Vampire Slayer is the secondary. The beer styles, American Imperial Stout as opposed to Belgian Pale Ale, are about as different as possible. Clown Shoes Beers' branding is very distinct from Vampire Pale Ale. Etc. Here are the two bottles, side by side. What do you think? Confusing?

undead



Based on all of these facts and the advice of our lawyers, we felt that we stood an excellent chance of winning a court battle. Then we found out that litigation could cost between \$300,000 to \$400,000.

Ummmm... that sounds like stabbing ourselves in the face to cure foot pain.

A settlement, the terms of which I am not at liberty to disclose, was reached with Michael Machat, Vampire Brands, and TI Beverage that licenses Clown Shoes to use the name Vampire Slayer. I can say that based on all factors, the Vampire Slayer name will soon be discontinued, despite the licensing agreement.

Immediately after we receive national label registration, the name Vampire Slayer will become Undead Party Crasher. The recipe remains the same, with smoked malt and holy water included. The new label expresses our feelings about the legal process and monsters.

undeadlabel



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