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# Apple Music Trademark Ruling Leaves ‘Tacking’ Standard Unclear

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Paul Kennedy, a partner in Troutman Pepper’s Intellectual Property Practice Group, was quoted in the April 17, 2023 *Bloomberg Law* article, [“Apple Music Trademark Ruling Leaves ‘Tacking’ Standard Unclear.”](#)

Brands also sometimes attempt to use tacking to thwart a priority-based challenge to an application by acquiring an even older mark as Apple did, trademark Attorney Paul J. Kennedy of Troutman Pepper Hamilton Sanders LLP said. But typically it involves identical goods and services, he said.

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Kennedy said the “net takeaway is that tacking remains narrow.” He also wondered whether the fact that Bertini had used his mark for 30 years didn’t seep into the court’s thinking.

“I can see how they arrived at that decision,” Kennedy said. “But I’m also left with, ‘Gee, the guy was out there for 30 years. That was a long time, and I think that’s not right.’”

At the same time, Kennedy and others said concerns about prejudice to Bertini could be better addressed by laches, an equitable doctrine that bars unreasonable, prejudicial delay in enforcing one’s rights. If whoever owned the “Apple” mark for records—Apple Corps until 2007, Apple afterward—knew about “Apple Jazz” but didn’t act, Apple would struggle to cancel the mark or claim infringement.

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