

## Tiger King: Dethroned ... by Trademarks?

*Warning: The following article contains spoilers about the Netflix series, Tiger King. Continue reading at your own risk.*

Many Americans are spending their time in quarantine exploring (ok, binging) new shows, and they are streaming Netflix's "Tiger King" in near-record numbers. The show centers around the "Murder, Mayhem and Madness" of the big cat community. Less obvious, though, are a number of fascinating legal issues that extend far beyond the exotic beauty of tigers and the lives of their handlers.

While a murder-for-hire indictment eventually brought down Joseph Maldonado-Passage, a.k.a. "Joe Exotic," a.k.a. "Tiger King," his descent began with trademark and copyright infringement suits between the eccentric zookeeper and his nemesis, Carole Baskin.

Exotic owned and operated a for-profit private zoo where he collected big cats and other animals and regularly performed with the animals, while Baskin ran Big Cat Rescue, a sanctuary for abused and abandoned animals. Baskin openly opposed Exotic's private zoo and actively lobbied for laws that would prohibit private ownership of large cats.

Exotic and Baskin were engaged in an internet battle long before legal action began between the two. But, things escalated in 2011 when Exotic began using the name "Big Cat Rescue Entertainment" to promote his show and zoo, which prompted Baskin to file a trademark infringement suit. In her complaint, Baskin pointed out the similarity in name and logo:

Baskin also alleged that Exotic had copied and used a "virtually identical" image of a snow leopard's eyes that was featured at the top of Big Cat Rescue's website. Finally, Baskin alleged that, despite not having a presence in Florida where Baskin's rescue is located, Exotic advertised a Florida phone number. She argued that Exotic intended the Florida phone number to suggest an additional connection or affiliation between the two parties.

Eight months later, while the first trademark lawsuit was pending, Baskin filed a second lawsuit against Exotic—this time for copyright infringement. Baskin alleged that in August 2011, Exotic had taken a photo from Big Cat Rescue's website and used that photo in YouTube videos. Baskin later had the photos and videos removed, but in one such video, Exotic included a statement that said

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nothing in the video was copyrighted, and "[a]nyone who files a complaint is lying."

Ultimately, Baskin succeeded in obtaining judgment on many of her claims: the court awarded Baskin \$25,000 in damages, dismissed Exotic's affirmative defenses and issued a permanent injunction against Exotic for the copyright suit.

Meanwhile, the court in the trademark case also sided with Baskin on summary judgment, dismissing Exotic's counterclaims. Eventually, the court ordered Exotic to pay \$953,000 in damages.

These judgments, which Exotic could not afford, likely led the Tiger King to shadier pastures and additional lawsuits. These new suits accused Exotic of a menagerie of misdeeds, including fraudulent transfer to evade Baskin's judgments. Facing the new suits, realizing he did not actually own the rights to the documentary footage, failing to discharge his debts in bankruptcy, and believing Baskin would take his zoo (and thus his identity) away from him, Exotic turned to extreme measures, hatching the murder-for-hire plot to kill Baskin for which he was criminally indicted and ultimately convicted.

What can we learn from the fall of the Tiger King, aside from steering clear of murder-for-hire plots? While it may be tempting to compete with individuals or companies—especially an arch-rival—by closely mirroring, mocking or copying content from them, it can easily result in intellectual property lawsuits which cost immense amounts of time and money. As the \$1 million in judgments against Exotic show, intellectual property laws have real teeth (as it were), especially where emotion has overcome reason.

Wielding intellectual property as a sword and shield is perfectly acceptable and legal when done correctly. There are many ways to compete fairly, and not run afoul of copyright and trademark laws. For example, you can use another's trademark when it is deemed "fair use" (i.e., to accurately identify another's goods and services, so long as you use only as much of the mark as is necessary to identify the product or service and the use does not suggest sponsorship or affiliation.) You can also use another's trademarks if the purpose is to criticize, comment on or parody, although this brings its own risks, including potential unfair competition claims from the trademark holder.

Exotic reminds us, however, that you cannot virtually copy another's mark and use it in commerce for the purposes of causing confusion and steering internet traffic away from the original trademark owner.



While Exotic's infringement was blatant and fairly simple, navigating proper use of intellectual property can be complicated. Companies and marketers should work closely with their legal counsel to help mitigate the risks associated with intellectual property use generally, competition, and trademark or copyright lawsuits that can "dethrone" even the greatest tiger king or company.

If you have questions about your use of intellectual property or advertising campaigns, please contact Reinhart's [Advertising, Media and Entertainment](#), [Patent and Intellectual Property Litigation](#) or [Commercial and Competition Law](#) groups.

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