Heavy Metal Lessons: Adventures in IP and Rock and Roll

By Adrian Kendall, Esq. What can a lawyer learn from Heavy Metal band Metallica? When it comes to intellectual property protection and client relations, the answer is plenty. On December 30, 2015, an IP lawyer sent a cease and desist letter to the members of Sandman, a Canadian Metallica tribute band, demanding that the band cease using the Metallica name and logo. Our clients work hard to develop value in their brands, so in the legal profession we use these letters all the time - that's standard procedure to stop unauthorized use ("infringement") and protect a client's valuable IP. But Sheppard Mullin lawyer Jill Pietrini almost certainly did not count on her letter going viral and drawing the ire of the band's fans. Per Metallica's very public apology in Rolling Stone, the attorney apparently did not consult with her clients before sending the letter. Calling their own lawyer "very overzealous", Metallica told Sandman they could "file the letter in the trash" and to "keep doing what you're doing ... we totally support you!" As for their lawyer, the legendary rockers said: she "can be found at SFO catching a flight to go permanently ice fishing in Alaska." Hopefully that was an overstatement and the attorney and client have since worked together to reset expectations, but there are a couple of clear lessons for lawyer-client relationships:

- Lawyers should always consult with clients on action taken to protect their interests, especially where it can affect a very public brand, and they should work together to establish clear standards for anti-infringement action if it's going to be "automatic". Digital media is a double edged sword: it can be a powerful agent for change and promotion, but it can also make backlash virtually instantaneous and global.
- When suggesting a course of action to protect a client's IP, lawyers and their clients should consider every aspect of how the infringing party is using the mark. Not every technical infringement needs to be shut down. In this case, the tribute band probably enhances the Metallica brand. If any action was necessary at all, a letter to the tribute band acknowledging the use and offering a revocable and limited, non-transferable license might have been the better approach.

Rock on!

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