



# Hamel-Smith

ATTORNEYS-AT-LAW, TRADEMARK & PATENT AGENTS

# FORUM

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## RISE OF THE DRONES: BUSINESS OPPORTUNITIES AND RISKS

*Nicole Ferreira-Aaron*

A drone is an unmanned aircraft, essentially a flying robot guided by remote control or flying on its own through an onboard computer, onboard sensors and GPS. Drones were first used by the military in the late 19<sup>th</sup> century for anti-aircraft target practice, intelligence gathering and as weapons' platforms. Drones got their name from the early, remotely-flown target aircraft used for practice firing of battleship's guns, the 1930's de Havilland Queen Bee. Today's drones have come a long way from their 1930's counterparts. They present tremendous opportunities for businesses, but their use can also pose challenges and risks.

Drones are widely used to support many every day activities. Last October, the devastating effects of flooding in parts of Trinidad were captured by drones. Over the Carnival weekend the Trinidad and Tobago Police Service utilised drones to maintain real time surveillance of activities in and around Port-of-Spain. Daily weather and traffic reports are fed by drone-gathered data. Search and rescue efforts are supported by drones, including, sadly, the recent example of the identification of the wreckage of the plane carrying Argentine soccer star Emiliano Sala. Sala was found using an underwater drone that recorded video of the plane's wreckage including his body. The use of drones is also being explored in agriculture and even the delivery of drugs and vaccines to remote parts of Africa. Mass distribution companies such as Amazon

are keenly interested in utilising drone technology in transportation. Predictably, there is an emergence of third party 'drone for service' vendors offering drones for rental to commercial operators.

Worryingly, it is also likely that the technology will also be available for use by drug traffickers and terrorists alike. Some fears include the potential threat of unmanned aircraft systems (UAS') being used to target critical infrastructure, drone overflights at power stations and the possibility that UAS' could be utilized to attack events where large crowds gather such as sports stadia or sites of major tourist attractions. Last year convictions were obtained in a California court against a couple who used drones to deliver illegal drugs to customers in a parking lot near to their home. In December of last year, London's Gatwick Airport had to be shut down twice after drones entered surrounding airspace. Hundreds of flights were cancelled, thousands of passengers had to be diverted and a significant amount of money was lost. This incident highlighted the very disruptive effect that drones can have to commerce and to people's lives.

How then are the potential benefits of drones to be balanced against their obvious potential harm? Regulation is one approach to controlling widespread misuse of drones.

The use of drones within the territory of Trinidad and Tobago is regulated by the Civil Aviation Authority ('CAA') under the Trinidad Civil Aviation Act and Civil Aviation Regulation No 19 (the 'UAS Regulation') governing Unmanned Aircraft Systems. The UAS Regulation defines and classifies different types of drones or Unmanned Aircraft according to their maximum take-off mass and velocity. It also defines UAS' to include the Unmanned Aircraft and all related command and control links and components. All UAS' are required to be registered with the CAA. All operators of UAS' are also required to obtain an Unmanned Aircraft Operator Certificate and a licence in respect of each classification of UAS operated. All registration requirements are set out in the UAS

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# CAN YOU OWN A MEME?

## MEMES AND INTELLECTUAL PROPERTY

*Jeanelle Pran*



One simply does not go through life without sharing a meme. Memes are a cultural sensation and they provide a means by which satirical humour overwhelms social media. It is virtually impossible to use the internet without being exposed to memes. They're enjoyed and shared by everyone, be it the young, the old, the rich, the famous and those far and wide.

It's as simple as taking a photo, adding a caption and voila, just like that, your meme can be a global viral hit. Undeniably, memes have become a part of pop culture, a way in which we reflect our emotions and thoughts in real time. Well known memes include the 'Bird Box' and 'Pikachu' memes.

### **What is a meme?**

A meme can be an idea, style, activity, behaviour, video, catchphrase or GIF which spreads from person to person using the internet.

### **Can you 'own' a meme?**

Memes raise a number of copyright issues. When dealing with memes, there are two 'works' which are important: the original work such as the photograph or video which the meme is based on and the meme itself which is an adaptation of the original work.

Copyright protects the creator of the original work by ensuring they have control over the way in which the work is used and disseminated. The photograph or video on which a meme is based is known as the original work and copyright subsists in these. A copyright owner has control over the reproduction and adaptation of these works.

Furthermore, copyright may be enforced not only in the original work but in the meme itself. A meme can be categorised as a derivative work as it derives from the original creation. Memes are adaptations and adaptations are protected as 'works' in copyright law. Therefore, it is possible to have intellectual property in a meme itself.

### **Enforcing copyright**

Generally, only the owner of the original copyright work can make adaptations and so it is usually this owner who can enforce the copyright in memes. Therefore, unless a meme is made by the person who owns copyright in the existing photograph or video, the meme may technically be an infringement of copyright.

To simplify, if the owner of copyright in the original work is different from the person who created the meme, the former may want to enforce copyright infringement against the latter. The meme may be an infringement of copyright in the original work since it is not the owner of the copyright work which has created the meme. Bringing infringement proceedings against the person who created the meme is

likely to be an issue, however, as it is not exactly simple to trace this person. Memes are shared thousands and sometimes millions of times and determining the actual culprit (originator) behind the creation of the meme is difficult.

Contrastingly, where the owner of the copyright in the original photograph or video is the person who has created the meme, a different issue arises, enforcing copyright infringement against others who use or share the memes for commercial gain.

### **When you share a meme, are you infringing the owner's copyright?**

For those of us simply sharing memes on social media and enjoying them for our own laughs, we should be just fine! However, using memes for profit-making may lead to copyright infringement. For instance, if you use a meme on your Facebook business page or company website, you may be in breach of the intellectual property rights in the meme if the purpose of using the meme is for financial gain.

An example is the use of the 'Socially Awkward Penguin' meme. National Geographic owns copyright in the Socially Awkward Penguin and surprise, surprise...they've been socially awkward about people using it. Getty images, National Geographic's licensing agents, have been on a quest to prevent copyright infringements and obtain compensation from websites using its memes.

The doctrine of 'fair dealing' may provide a defence to those who create or share memes without the owner's permission. Fair dealing refers to a person's ability to use a copyright protected work for certain purposes such as for research, parody, education or even criticism, provided that the way in which the copyright work is used is fair.

Whether the treatment of the work is fair, will depend on various factors such as the purpose for the use of the copyright work, how much of the original work has been taken, and whether the meme will be used for commercial gain. If a meme is used to generate profits, the fair dealing defence is unlikely to apply.

### **Can memes be trademarks?**

It is a hard task to trademark a meme. Memes evolve, with the text or catchphrase on the image or video changing constantly. This change challenges the notion that memes can be trademarks. However, this has not stopped the influx of companies trying to gain trademark in memes. Several companies have gone on to trademark the name of the meme itself.

Two words – Grumpy. Cat. The company behind the Grumpy Cat meme has been successful in trademarking the name 'Grumpy Cat' for goods such as toys. Similarly, the founders behind the famous 'Doge' meme have been successful in trademarking the name 'Doge' for clothing.

## *Rise Of The Drones: Business Opportunities and Risks*

*Nicole Ferreira-Aaron (cont'd)*

(Cont'd from page 1)

Regulation. The UAS Regulation contains certain exemptions

from registration surrounding the recreational use of certain classes of UAS by individuals or members of unmanned aircraft club as defined in the UAS Regulation.

A certified operator is restricted from operating a UAS if he is impaired by reason of a medical condition, the effect of medication or the influence of alcohol or a controlled substance. Operators are always also required to maintain a visual line of sight with the Drone and undertake certain responsibilities for the safe operation of the Drone and deference to other aircraft. An operator of UAS for commercial purposes is required to maintain Public Liability Insurance. An operator requires the consent of persons to operate a UAS overhead such persons.

Additionally, the flying of drones is prohibited in certain no fly zones. These include a radius around Piarco International Airport, ANR Robinson International Airport and Camden Heliport, the Caroni Bird Sanctuary, Port-of-Spain, Point-a- Pierre, Chaguaramas, Galeota, Point Fortin and Point Lisas. Additionally, the use of drones is prohibited within 5 km of any manned aircraft operations. Drones may not be operated in any open-air function or mass public gathering. Drones should not be flown at a height greater than 121 metres or 400 feet above the ground. Drones should also not be operated in a manner that may endanger persons or property.

Beyond regulation, the use of technology might also be helpful. It is possible for Drones to be assembled with built-in geo-fencing sensors which prevent them from entering no-fly zones. It may be wise to restrict the importation of models to ones fitted with such gear. Radio jamming to restrict the delivery of drugs to designated locations such as prisons should be explored. Aviation regulators and law enforcement agencies may also need to be equipped with drone-detection technology.

Safety education for UAS Operators may also be key. Areas of focus might include flight time calculation, meteorology, security checks for aircraft navigation systems, emergency instructions, and air traffic law. No doubt the increasing popularity of UAS' will also be a matter of keen interest to insurers who will be looking to product offerings to protect both operators and the public from risk of mid-air collision, physical and property damage as well as personal injury.

The drone industry is growing at a very rapid pace and the technology is here to stay. The manufacture, sale and use of drones is anticipated to generate significant revenues and create many jobs. The technology's potential for improving

living conditions is obvious. Equally obvious is the potential harm to human life, commerce and privacy that its misuse might pose. The challenge to governments and regulators playing catch up with the rapid growth and enhancement of drone technology is significant. To enforce current rules and regulations and to re-frame them to keep pace with the changes, particularly on two small islands, is likely to be both expensive and logistically intimidating.

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### **Can You Own A Meme?** **Memes And Intellectual Property**

*Jeanelle Pran (cont'd from page 2)*

These examples show the possibility that memes or at least the name by which a meme is referred to may be trademarked. Nevertheless, this depends on the context and each case will turn on its own facts.

#### **What cautionary steps should you take when using a meme?**

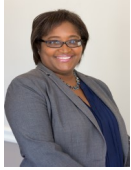
It is important to be wary of who owns the intellectual property in both the original work and the meme and whether they may seek compensation for infringement. In considering this, you must remember that if you use a meme to generate profits, this is likely to raise red flags. It is advisable to refrain from posting memes on blogs or as part of marketing campaigns for profit as this can infringe the meme owner's intellectual property rights. You should consider obtaining a licence to use the meme to prevent any claims for infringement.

#### **Conclusion**

One thing is certain, at this very second, while you read this, someone is sharing a meme on social media. Memes are a growing part of our interactions with one another and like all growing phenomenon, legal implications will arise. Meme owners are now more aware of the need to protect their intellectual property in memes and consequently, intellectual property rights now have a greater role to play in the world of memes than ever before!

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## WHAT'S IN A NAME? FENTY V FENTY

*Fanta Punch*

The legal battle between Ronald Fenty and his famous daughter Robyn Rihanna Fenty over the use of the Fenty name is currently being played out in the media. It may seem obvious that Mr. Fenty should not be legally prohibited from using his own name, but under intellectual property law the issue is not so straightforward.

Rihanna's 'Fenty' trademark, which has been registered in a number of countries worldwide since 2014, is used in connection with an exclusive range of luxury products sold under the 'Fenty Beauty' brand. In this dispute, Rihanna claims that her father, through his company, 'Fenty Entertainment', has traded on the goodwill and reputation of her well known Fenty trademark. She also alleges that Fenty Entertainment misrepresented itself as her agent and attempted to book events and solicited money on her behalf. Ronald Fenty and Fenty Entertainment also sought to register the name Fenty in relation to *resort hotel services* as a trademark in the United States, though it appears that this application was unsuccessful.

A central issue here is whether personal use of one's own name can be prohibited where that name is identical or very similar to that of a well-recognised brand. The issue is not a new one. Rihanna herself is no stranger to legal disputes, such as when DC Comics sought to stop her trademark registration of the name 'Robyn' on the grounds that it was too close to their well-known comic book character. But it remains a particularly interesting and engaging point, especially when it involves very valuable and well recognised brands.

Under Trinidad and Tobago trademark law, it is possible to register one's name, company or firm *if presented in a special or manner*, though if an individual is thinking of using his/her name in connection with a business or commercial activity, there are a few important things to consider.

1. It is worth conducting some early due diligence to see if an identical or similar mark already exists and is being used in relation to the intended goods or services. Conducting searches of relevant trademark registries can be one way to confirm whether there are similarly registered trademarks. The importance of having a registered trademark should not be overlooked or minimised as it provides a brand owner with not only the right to use that mark exclusively but also to have protection under the law against any unauthorised use. For a brand owner, this is a key tool in any strategy for the commercialisation of products on a wide scale.
2. Secondly, even where someone is using his/her own name as a trademark, it must comply with the criteria for trademark registration. Every trademark must be distinctive and

able to distinguish between the brand owner's goods or services and those of others. Presenting it in a special or unusual manner can help to make it distinctive and ensure that it is used in a way which would not cause another in the same business to mistakenly engage in infringement though honest use. One way to do that, would be to use one's full name and not an element of it, for example 'Ronald Fenty Entertainment' as opposed to 'Fenty Entertainment'. In this particular case, there may be compelling evidence to suggest that there was a deliberate intention to confuse and mislead others into believing that there was a connection with Rihanna and her Fenty brand.

3. Brand confusion ought to be avoided as far as possible, because it can result in expensive and time-consuming litigation, for which the losing side might be liable for significant damages, loss of business and depending on the nature of the infraction, punitive actions. In this instant case, there was more than just use of the name - Fenty - by a company with the same name, conducting similar business. It was also use by Rihanna's father, using what is his own name as well, which further exacerbates the potential for confusion in the market, as understandably one could be led to believe that 'Fenty Entertainment' had tacit authority to act on behalf of Rihanna and the Fenty brand.

While it seems easy to argue that a person should be entitled to the conduct of his or her business in his own name; where there is a claim of infringement or misuse of similarly registered mark, one factor for a court to determine will be the extent to which that use does not cause confusion and that any ulterior or dishonest motive exists.

It is too early to tell if the case of Fenty vs. Fenty will be settled out of court or if it will go all the way to trial, but one likely outcome may be that 'Fenty Entertainment' is not permitted continued use of its name as it exists. It may well be that Mr. Fenty would be permitted to use the Fenty name, but only in combination with his full name – i.e. 'Ronald Fenty' and with a notification that makes it clear that the company is not affiliated with Rihanna or her Fenty brand.

In cases like these, the Court is likely to decide in favour of an approach which seeks to avoid confusion or is misleading of the public. Balancing the protected rights of a valuable brand against those of an individual's right to use his own name is an important factor in that decision.

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