

TACO BELL THROWS ITS HAT IN THE RING TO FREE “TACO TUESDAY” FROM TRADEMARK PROTECTION

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It’s 9 a.m. on a Tuesday and you think to yourself . . . what are we having for dinner tonight? And then it hits you – it’s Tuesday . . . Taco Tuesday!

Think twice before you snap a picture of your Tuesday taco treat and caption it “Taco Tuesday!” Taco Tuesday is trademarked.

The Battle of Taco Tuesday. Taco John’s, a Wyoming-based fast food chain, owns the rights to the Taco Tuesday trademark and has since 1989 (except in New Jersey). But that hasn’t jived with taco giant, Taco Bell. Just last week, Taco Bell filed a petition with the U.S. Patent and Trademark Office (“USPTO”) to cancel the Taco Tuesday trademark.

Taco Bell does not want to take over the rights to “Taco Tuesday.” Rather, Taco Bell states in its cancellation petition that it wants to “free” the term, allowing anyone to use it as they see fit. Taco Bell’s petition to the USPTO emphasizes this, suggesting that the Taco Tuesday mark “should belong to all who make, sell, eat, and celebrate tacos” and that “nobody should have exclusive rights in a common phrase.”

According to Taco Bell’s lawyers, “can you imagine if we weren’t allowed to say ‘what’s up’ or ‘brunch’? Chaos.”

Taco Bell cites to a study finding that 86 percent of consumers across the country believe “Taco Tuesday” to be “a common name not associated with any particular company.” And the Trademark Trial and Appeal Board agrees that “Taco Tuesday” is a “very commonplace term that refers to having tacos and drinks on that particular day of the week.” *In re Monday Night Ventures LLC*, Ser. No. 88817107 (TTAB, Nov. 28, 2022), at 21.

So what really happened?

“**Taco Tuesday**” has fallen victim to genericide. A big word for a rather simple idea, genericide occurs when a trademark becomes so common that it no longer satisfies the requirement of “inherent distinctness.” When this happens, the trademark no longer qualifies for intellectual property protections. “Taco Tuesday” may very well be too generic. Taco John may be forced to accept the reality of the widespread use of its trademarked phrase.

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Practical Takeaways. First, tagging your favorite Taco Tuesday post with the phrase is probably acceptable after all. Second, and perhaps more importantly, the outcome of the Taco Tuesday case will form the basis for future trademark protections on other generalized phrases and the doctrine of “genericide.” Policing your rights is an important step in preventing genericide.

Hodgson Russ’s intellectual property team helps clients protect their intellectual property rights by prosecuting and defending claims of ownership. Hodgson Russ can also help secure trademarks, copyrights, and other protections for businesses and individuals. For more information, please contact [Jody Galvin](#) (716-848-1520), [James J. Zawodzinski, Jr.](#) (716-848-1595), or any member of our [Intellectual Property Litigation Practice](#).

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