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Sarah Wilner

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The Legal Issues Surrounding #Not-So-Chilla

BY [SARAH WILNER](#)/ ON MAY 4, 2017

Let's face it – it is nearly impossible to scroll through any form of social media during the weekends of April 14-23 without seeing floods of content surrounding “one of the most critically acclaimed”^[1] music and arts festivals in the world – Coachella. Since its first show in 1999 – a two-day event drawing a crowd of about twenty thousand each day, losing close to one million dollars^[2] – Coachella's increasing popularity has evolved so much that by 2012 it offered a second-weekend of the festival.^[3] Currently, the sold-out event draws crowds of about 600,000^[4] and is known to be one of the most profitable music festivals in the United States and all over the world.

What sets Coachella apart from other festivals, besides the diverse range of musical genres and the interactive art installations, is the central theme of youth, peace, love, and bohemian-hippy inspired fashion, somewhat similar to Woodstock.^[5] This trend has become a marker of identity for the festival. Moreover, due to “its proximity to Los Angeles and its noncommittal brand of hipness, Coachella has become a site of celebrity pilgrimage, providing it an air of glamour”^[6] it has become “a whirlpool of commercial potential.”^[7] So much so, that it may seem “to be filled with guests more interested in advertising and self-promotion than, well, music and the arts.”^[8]

According to Merriam-Webster, Coachella “is the name of a city as well as a valley in Southern California.”^[9] Coachella Valley is collectively known as the Palm Springs area.^[10] In recent years the name Coachella has become “increasingly famous” for its association with the annual music and arts festival held at the Empire Polo Club in Indio, California – “and triggers an annual surge in dictionary lookups for Coachella.”^[11]

With registrations for numerous variations of the Coachella mark (i.e., Chella, Coachella Valley, Coachella, etc.) along with the increasing usage of the #Chella hashtags on social media, it is unsurprising that AEG Presents, Coachella's parent company, has been stepping up its game in policing the goodwill of the Coachella name.^[12]

Over the past year and few months, AEG has been aggressively sending cease and desist letters and bringing suit against different brands and companies for allegedly capitalizing on the festival's fame and popularity. Last month, AEG sued Urban Outfitters and its Free People affiliate for using the Coachella mark as style names for festival-inspired products on their sites.^[13] The complaint accuses Urban Outfitters of infringing and diluting the brand by misleadingly using the Coachella mark “in its website metatags to return festival-oriented product results.”^[14] AEG also accuses Urban Outfitters of “purchas[ing] keyword

advertisements from Google using the word 'Coachella' that lead Google search results to a number of its products."[\[15\]](#) While some brands like H&M and Pandora have licenses to legally use the Coachella mark, the complaint states that Urban Outfitters and Free People are using the Coachella name in direct competition with its licensees and sponsors.[\[16\]](#) Ultimately misleading consumers in a way that is likely to cause confusion and deceive consumers into believing the brands are sponsors of Coachella.[\[17\]](#)

Additionally, "[i]n the wake of changing legislation,[\[18\]](#) emerging brands are using the festival scene to market marijuana, much like fashion brands before them."[\[19\]](#) Most recently, AEG sent a cease and desist letter to Lowell Farms, a Santa Barbara based "Ganjapreneur,"[\[20\]](#) after making a limited edition "Coachella Blend" of pre-rolled joints offered only during the April 14-23 festival weekends, and available for purchase at a dispensary twenty miles away in Palm Springs.[\[21\]](#)

The cease and desist letter accuses Lowell Farms of "running a promotion which features the Coachella intellectual property and is clearly intended to trade on the substantial goodwill and reputation earned by AEG over the years."[\[22\]](#)

Presumably, Lowell Farms' intent for creating the Coachella blend was essentially based off the recent decriminalization of marijuana in California,[\[23\]](#) along with the prediction that "[c]annabis is on track to be a \$50 billion industry by 2026."[\[24\]](#) There is also a common belief that "[m]usic festivals and smoking pot go together like macaroni and cheese."[\[25\]](#) This is not an unreasonable assumption considering the recent popularity of the mobile application Weedmaps – which describes itself as "the yelp of weed" dispensaries.[\[26\]](#) After all, "Coachella is the only music festival where you might get a chance to see Rihanna, not a scheduled performer, smoke a blunt while riding atop her security guard's shoulders."[\[27\]](#) Thus, showcasing these products for music festivals, "[f]rom a marijuana marketing standpoint, . . . is the perfect mix of millennial money and the 'i'll try anything once' attitude."[\[28\]](#)

To Lowell Farms, Coachella Valley is a geographic region: "Coachella was like the name of a place, like a Denver omelet."[\[29\]](#) Further, Lowell Farms has created "location-themed cannabis blends" in the past, named after other geographic regions such as San Francisco and Denver.[\[30\]](#) Even if Coachella Music Festival is considered primarily geographic and descriptive under the Lanham act,[\[31\]](#) it seems more likely that AEG would prevail in establishing secondary meaning[\[32\]](#) before Lowell Farms would be able to show the Coachella name is primarily geographically descriptive and thus, unprotectable.

For purposes of a potential trademark infringement claim against Lowell Farms, it is unclear whether consumers would be misled by the use of the Coachella mark on marijuana products being that Coachella's terms of service explicitly prohibits bringing marijuana onto festival grounds, even for those with medical cards.[\[33\]](#)

On the other hand, this difference in channels of trade between Lowell Farms and Coachella's goods and services would be irrelevant regarding a potential dilution claim.^[34] All Coachella would have to establish is that their trademark rises to a level of fame,^[35] a seemingly low threshold for them to meet.

After AEG sent Lowell Farms the cease and desist letter, the "Ganjapreneur"^[36] put out notice that he didn't want any legal trouble and complied by changing the name from Coachella Blend to #NotChilla Blend.^[37] It remains to be seen whether a similar parody defense used in the Chewy Vuitton case^[38] would work for Lowell Farms here. To be continued...

Sarah Wilner is a second-year law student at Benjamin N. Cardozo School of Law and a Staff Editor of the Cardozo Arts & Entertainment Law Journal. She is currently involved in Cardozo's Fashion Law Practicum and has previously interned at a Family Law Firm specializing in celebrity and high net worth family issues. After law school she hopes to pursue a career in either the field of Family or Intellectual Property law.

^[1] Coachella LLC's complaint against Urban Outfitters and Free People available at: <http://www.ipwatchdog.com/wp-content/uploads/2017/03/031125431959.pdf>

^[2] Carrie Battan, *The Appeal of the Coachella Way of Life*, *The New Yorker* (April 18, 2016), <http://www.newyorker.com/culture/cultural-comment/the-appeal-of-the-coachella-way-of-life>.

^[3] *Id.*

^[4] Kali Hays, *Coachella Sues Urban Outfitters for Capitalizing on Festival Brand*, *WWD* (Mar. 16, 2017) available at <http://wwd.com/business-news/legal/coachella-sues-urban-outfitters-for-infringing-festival-brand-10845798/>.

^[5] Emina Pelja, *Coachella: The New Woodstock?* *Odyssey* (April 26, 2016), <https://www.theodysseyonline.com/coachella-the-new-woodstock>.

^[6] Battan, *supra* note 2.

^[7] *Id.*

^[8] Madalyn Lamastro, *Coachella: Music & Arts Festival or Advertising Extravaganza?* *Haute-Mess* (April 17, 2017), <http://haute-mess.com/2017/04/17/coachella-music-arts-festival-or-advertising-extravaganza/>.

[9] Coachella defined at <https://www.merriam-webster.com/news-trend-watch/coachella-2016-04-16>.

[10] Id.

[11] Id.

[12] Polly Mosendz, *Coachella Isn't All That Chill About Its Brand*, Bloomberg (April 13, 2017 at 10:20 AM) <https://www.bloomberg.com/news/articles/2017-04-10/coachella-isn-t-all-that-chill-about-its-brand>.

[13] Hays, *supra* note 4.

[14] Chris Kissel, *Coachella Files Law Suit Against Urban Outfitters for Trademark Infringement*, *la weekly* (Mar. 16, 2017 at 4:15AM), <http://www.laweekly.com/music/coachella-files-lawsuit-against-urban-outfitters-for-trademark-infringement-8030133>.

[15] Id.

[16] Complaint against Urban Outfitters, *supra* note 1, <http://www.ipwatchdog.com/wp-content/uploads/2017/03/031125431959.pdf>.

[17] Id.

[18] California Proposition 64, Marijuana Legalization (2016).

[19] Sam Reed, *Is Cannabis About to Conquer Coachella?* Pret-a-Reporter (April 12, 2017 6:10PM), <http://www.hollywoodreporter.com/news/coachella-weed-joining-fashion-at-events-around-festival-992783>.

[20] Id.

[21] *Coachella Goes After Weed Grower for 'TM Breach'* IQ News (April 10, 2017), <https://www.iq-mag.net/2017/04/coachella-weed-grower-lowell-farms-tm-breach/#.WPkYiLQ1oqg>.

[22] Id.

[23] California Proposition 64, Marijuana Legalization (2016).

[24] Reed, *supra* note 19.

[25] E, *Weed at Coachella – Do You Dare?* Dab Connection (April 6, 2017), <https://dabconnection.com/news/coachella-festival-weed-rules/>.

[26] Reed, *supra* note 19.

[27] Battan, *supra* note 2.

[28] Reed, *supra* note 19.

[29] Mosendz, *supra* note 12.

[30] *Id.*

[31] 15 U.S.C.A. § 1052(e)(2) (West 2017).

[32] 15 U.S.C.A. § 1052(f) (West 2017).

[33] Reed, *supra* note 19.

[34] Sheena Butler-Young, *Why Urban Outfitters May Have a Hard Time Fighting Coachella's Suit*, FN News (Mar. 21, 2017), <http://footwearnews.com/2017/business/retail/urban-outfitters-coachella-music-festival-lawsuit-trademark-infringement-329295/>.

[35] *Id.*

[36] Reed, *supra* note 19.

[37] Mosendz, *supra* note 12.

[38] *Louis Vuitton Malletier SA v. Haute Diggity Dog, LLC* 507 F.3d 252 (4th Cir. 2007).
[CoachellaCoachella FestivalLegalized MarijuanaMarijuanaUrban Outfitters](#)