

Lippes Mathias Secures U.S. Trademark Approval for Client's "Never Give Up Day" Mark Following Rigorous USPTO Review



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Lippes Mathias LLP today announced that it successfully secured approval from the U.S. Patent and Trademark Office (USPTO) for the U.S. trademark registration of “Never Give Up Day” on behalf of its client, Alain Horoit, a Belgian individual. The approval marks a significant milestone for Horoit in a complex, multi-jurisdictional application process initiated under the Madrid Protocol, a treaty facilitating international trademark registration.

Horoit’s U.S. trademark application, an extension from his registered rights in Belgium through the treaty, faced substantial challenges and an uncertain outlook. The USPTO refused it on two fronts: a conflict with an earlier existing U.S. registration for a phrase comprising the identical phrase “Never Give Up” and finding assertion that “Never Give Up Day” failed to function as a trademark because it allegedly identified a holiday that all could celebrate and not a way for consumers to identify Horoit’s services. Such refusals present significant obstacles because marks that “fail to function” are considered incapable of protection even if they have arguably earned a reputation over time, as Mr. Horoit’s had done.

[Matthew D. Asbell](#), partner and member of Lippes Mathias’ intellectual property practice team, oversaw the U.S.

application process, directing strategic responses and legal arguments that addressed the USPTO's procedural and substantive concerns. Leveraging legal precedent and a deep understanding of trademark law, Asbell made a first attempt to overcome the refusals without initial success, but Horoit and Asbell "never gave up". They successfully differentiated Horoit's mark from the prior registered phrase and demonstrated how the phrase, even when referencing a holiday that all could celebrate, still uniquely identified Horoit's offerings throughout the United States (and beyond). As a result, the USPTO ultimately registered the mark on October 29.

About Matthew D. Asbell

With extensive knowledge and background in information technology, entertainment, medicine, and a range of other fields, Lippes Mathias partner Matthew D. Asbell works comfortably and efficiently with clients in diverse industries, including the food and beverage industry. He assists clients in clearing, obtaining, enforcing, and defending trademark, design and utility patent, and copyright rights in the United States and throughout the world. Prior to becoming a lawyer, Asbell developed a broad base of knowledge and expertise in roles he held across various industries, managing emerging singer-songwriters and recording artists, training corporate employees in software applications, and at one point, studying medicine at the Medical College of Pennsylvania and Hahnemann University School of Medicine. Asbell received his J.D. from the Benjamin N. Cardozo School of Law in 2007, and in 1993, graduated from Carnegie Mellon University with his B.S. in Psychology and a minor in music.

About Lippes Mathias LLP

Lippes Mathias is a full-service law firm with more than 200 attorneys serving clients regionally, nationally, and internationally. With offices in Buffalo, Clarence, Albany, Long Island, New York, Rochester, Syracuse, and Saratoga Springs, N.Y.; Greater Toronto Area; Chicago, Ill.; Jacksonville and West Palm Beach, Fla.; Cleveland, Ohio; San Antonio, Texas; Oklahoma City, Okla. and Washington, D.C., the firm represents publicly and privately-owned companies, private equity and venture capital firms, real estate developers, financial institutions, municipalities, governmental entities, and individuals.

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Related Team



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