



Law360 Features Floyd Mandell's Insight on Trademark Victory for Lizzo

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Floyd Mandell, partner and co-chair of Katten's Trademark, Copyright and Privacy group, spoke with *Law360* after pop star Lizzo secured trademark rights to the phrase "100% That B****" for use on apparel. In a precedential opinion released February 2, the US Patent and Trademark Office's Trademark Trial and Appeal Board (TTAB) reversed an examiner's decision denying the Grammy-winning artist's applications.

The phrase at issue was popularized in Lizzo's hit "Truth Hurts," which was first released in 2017 and re-released in 2019. In refusing registration, the examiner had noted that the phrase "is a commonplace expression widely used by a variety of sources to convey an ordinary, familiar, well-recognized sentiment." The TTAB, however, found that the record evidence demonstrated that consumers associate the phrase with Lizzo and her music – even when used by other parties in an ornamental manner on goods similar to those covered by Lizzo's trademark applications.

"We acknowledge that to some degree consumers and potential consumers have been exposed to use of the proposed mark 100% THAT B**** in a non-source-identifying (i.e., ornamental) manner on the same and similar goods to those of Applicant," the TTAB said. "We find, however, that that circumstance is outweighed by references in most of those uses to Lizzo and/or her music."

Floyd spoke with *Law360* regarding takeaways from the TTAB's ruling and, in particular, the implications for comparable trademark applications. He explained that while such cases are often nuanced, the ruling is "helpful in demonstrating what factors will be considered relevant and important in predicting the probable outcome."

["Lizzo Convinces TTAB to Register '100% That B****' TM,"](#) *Law360*, February 2, 2023

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