



Band Name 101

Before committing to a name (e.g., spending lots of money, getting fans, etc.), you should determine whether anyone else is already using the name. Whether you have rights to your name depends on a few things:

- (1) priority, or if you used the name first;
- (2) territory, or area [city, state, region, country, etc.] where you use the name; and
- (3) use, or whether you actually perform under the name.

If you used the name first, you may be able to stop someone else from using the same or similar name. However, unless you have a federal trademark registration (which gives you exclusive rights to use the name throughout the United States) you only have rights to use your name exclusively in the area where you have actually used it. For example, if you began using your band name in the St. Louis area in 2000 and did not play or sell CDs outside of that area, you cannot prevent a band in California from using the same or similar name ... although you can prevent them from using the name in the St. Louis area if you were the first to use the name in that area. If you decide to apply for a federal trademark for your name in 2013, you could not prevent another band that started using the name in 2001 in another part of the country from using the name in that territory, as they have priority in that area.

Researching a Band Name. You should research the potential name for your band as thoroughly as possible before committing to the name to avoid using a name another band is already using. Search websites such as www.google.com, www.bandname.com, and www.uspto.gov, and check with ASCAP and BMI to see if someone is using a name that is the same as or similar to the name you are considering. You may even want to consult an attorney and have a full trademark search performed to be as careful as possible not to infringe on someone else's name. While you can never be absolutely certain that no one else is using your name, these are good methods to rule out potential problems from arising down the road.

You will also want to check to see whether your potential band name is available as a domain name for your website. Visit www.internic.net and perform a "Whois" search for yourbandname.com and similar variations to see if someone already has it registered. If the domain name is available, and you are relatively confident that the band name is not being used by others, you may want to proceed to register the domain name to prevent someone else from getting it first.

Protecting Your Band Name. Once you are reasonably comfortable that no one else is using the name, you will want to protect it, as it could be one of your most valuable assets. An important issue to address in your Internal Band Agreement is who, if anyone, gets to use the name if the band breaks up or if a key member or members leave the band. It is much easier (and less expensive) to deal with this issue when the band members are all happy with each other than to wait for a situation to arise and try to deal with it then. Keep records of when and where you perform, sell CDs and get publicity, so you can prove your priority of use of the name in various territories. You may also want to apply for a federal U.S. trademark (and/or potentially a foreign trademark), advisedly through an attorney, as this process is quite a bit more expensive and complicated than registering your copyrights. Furthermore, use the "™" symbol with your unregistered band name and/or logo to let others know that you claim trademark rights in your name. If you have a federal trademark registration, be sure to use the "®" symbol to inform others that you have a registered trademark.