

Yosemite Trademark Settlement Restores Historic Names to Park Venues, Returns Control of Marks to US Government

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Several Yosemite National Park facilities will regain their iconic names through a settlement announced July 15, 2019, between the National Park Service (NPS) and its former concessionaire, ending a dispute that provides a cautionary tale about the importance of properly protecting one's trademarks.

The \$12 million settlement was a costly lesson for the NPS, whose former concessionaires obtained federal trademark registrations for historic park lodging and recreation area names including THE AHWAHNEE, YOSEMITE LODGE, CURRY VILLAGE, WAWONA, BADGER PASS, and even (for merchandise) YOSEMITE NATIONAL PARK. The deal provides that the trademark rights will be transferred to NPS after the current concession term ends.

Background

The dispute arose after NPS awarded the park concession to an Aramark Corporation subsidiary in 2015, replacing a Delaware North Corporation subsidiary. As was the case when Delaware North took over park operations in 1993, Aramark was required to pay its predecessor the "fair value" for tangible and intangible property used in running the park.

After losing the contract, Delaware North demanded \$51 million as the "fair value" of its trademark rights in the names of the facilities as well as other names and logos including the slogan GO CLIMB A ROCK, the Half Dome logo, and the Ahwahnee Hotel's signature design. NPS countered that their fair value was just \$3.5 million.

In response, Delaware North sued the federal government in the US Court of Federal Claims to get what it thought was "fair value" for the marks. Aramark later joined the case as a third party defendant.

The ex-concessionaire bolstered its claim to the marks through federal trademark registrations it acquired from its predecessor, Yosemite Park & Curry Co., and others it applied for during its tenure. Under Section 7 of the Lanham Act, those registrations created the legal presumption that Delaware North owned the marks and had the exclusive right to use them in commerce.

Although Section 13 of the Lanham Act allows anyone "who believes that he would be damaged by the registration" to file an opposition with the Patent and Trademark Office to block registration, the NPS never did so. A park spokesman told Law360 that before Delaware North brought its suit, "We didn't know they had trademarked the names."

Presumably to avoid a preliminary injunction and reduce its legal exposure, the NPS came up with new names for the park locations, including THE MAJESTIC YOSEMITE HOTEL, YOSEMITE FALLS LODGE, HALF DOME VILLAGE, BIG TREES LODGE, and YOSEMITE SKI AND SNOWBOARD AREA. Many park fans bemoaned the loss of the iconic names.

In addition to restoring the historic names, the settlement provides that the Aramark subsidiary will pay \$8.16 million and the federal government will pay \$3.84 million – far less than the \$51 million that Delaware North was originally demanding. It also provides that

when the Aramark contract ends in 2031, the trademarks will revert to the US government.

Key takeaways

How could this have been avoided? When the NPS first granted Yosemite Park & Curry Co. the right to develop the park accommodations and other venues, it should have required that the trademarks used in those establishments, and the goodwill therein, be owned by the government and licensed to the concessionaire.

Delaware North bears some responsibility too, for demanding such a large sum for the trademarks. Although the company likely added value to the brands, through the goodwill it developed with its guests over the years, it's unlikely that the NPS considered that goodwill to be property used for Yosemite Park operations, like vehicles, hotel furnishings, merchandise inventory, and so forth.

In addition, it's unclear that \$51 million was the "fair value" of the trademark rights. Given their deep historic connection to the park, the licensing value of those marks for properties outside of the park would be limited. For example, there is only one Ahwahnee Hotel.

Best practices

- When granting anyone a temporary right to operate a business on or with your property, make sure the agreement clearly establishes the parties' rights to any trademarks used in the business.
- Never allow a licensee, franchisee, distributor, or sales agent to register any trademarks you want their successor to be able to use – instead, register the marks in your own name and license them to the other party.
- When putting a value on a trademark, be realistic, and be mindful of all of the different factors that contributed in their own way to the mark's goodwill.

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