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Involuntary trademark co-ownership

IP FRONTIERS


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In March 2026, the U.S. Supreme Court denied a petition for certiorari in the appeal of *Zioness Movement, Inc. v. The Lawfare Project, Inc.*, decided by the Second Circuit Court of Appeals on August 13, 2025. The petition sought to bring Supreme Court guidance regarding an uncommon issue: involuntary co-ownership of a trademark registration.

Co-ownership of a trademark between two different entities is statutorily permitted (via 15 U.S.C. § 1052(d)), but often advised against by trademark practitioners. For example, McCarthy on Trademarks and Unfair Competition, one of the leading trademark treatises, notes that "[l]egal recognition of more than one owner of a single mark is contrary to the basic definition of a mark as identifying and distinguishing a single seller's goods or services." 2 McCarthy on Trademarks and Unfair Competition § 16:40 (5th ed.). Co-ownership of a trademark leads to several practical complications. Trademark co-owners must share in the responsibility of policing the trademark; no trademark infringement lawsuit can proceed without all co-owners involved. Where multiple parties are offering the same goods or services with the same mark, confusion will often inevitably occur. And, without proper safeguards, one co-owner cannot control the goodwill of its mark as the other co-owner contributes to the same.

Some of the complications involved with co-ownership are remedied with what is known as a "concurrent registration." "[C]oncurrent registrations may be issued to such persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce." 15 U.S.C. 1052(d). According to the Trademark Manual for Examining Procedure, "[a] concurrent registration is one with conditions and limitations... as to the mode or place of use of the applicant's mark or the goods/services/collective membership organization on or in connection with which the mark is used." Most commonly, concurrent registrations contain geographical restrictions for the respective trademark owners. For example, one co-owner may have the rights to use a trademark in all states east of the Mississippi River, while the other will have the rights to use a trademark in all states west of the Mississippi River. The geographical separation between the multiple trademark owners makes it less likely that a consumer will encounter both co-owners in the marketplace, and thus, less likely that confusion will result.

But, what happens when a Court determines co-ownership of a trademark without the

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restrictions inherent in a concurrent registration and without the agreement of each of the co-owners? That was the question presented by the *Zioness Movement, Inc.* case.

The *Zioness Movement, Inc.* case involved a trademark for "ZIONESS" which had a complicated history. The mark was created by The Lawfare Project, Inc. ("LPI") in August 2017 and the development was spearheaded by LPI's then-Director of Legal Affairs, Amanda Berman. Shortly thereafter, LPI stopped funding the "ZIONESS" project, but Berman continued it by forming a new company, Zioness Movement, Inc. ("ZMI") while still employed by LPI, though she would eventually leave LPI. On April 11, 2018, ZMI solely applied to register the ZIONESS mark at the U.S. Trademark Office, which registered on May 5, 2020 with ZMI solely listed as the owner. Seemingly, while the mark was initially developed by LPI, the mark was no longer associated with them. Despite this, LPI filed to cancel ZMI's registration for "ZIONESS," kicking off the chain of proceedings that would eventually lead to the Second Circuit.

At the District Court, in the Southern District of New York, the case made its way to trial. The jury was ultimately tasked with deciding who owned the ZIONESS trademark, and was given three options: LPI, ZMI, or both. The jury decided that both parties owned the trademark. On appeal, the Second Circuit upheld the jury's verdict, finding that there was sufficient evidence that showed that LPI initially spearheaded the mark and its development and that the confusion over Berman's dual-employment led to a reasonable conclusion that both parties owned the trademark. The Court's focus was more on the creation and development of the mark rather than the actual use in commerce. Further, the Second Circuit held that ZMI could not appeal the verdict sheet given to jurors, which allowed for a possibility of co-ownership, because they failed to object to the verdict sheet before the District Court.

The Court's decision, requiring co-ownership of a trademark between two distinct parties with no limitations, creates some practical complications. Both LPI and ZMI are free to use the mark without encumbrance. There are no geographic limitations or restrictions as to their respective trade channels; it can be inferred that consumers will encounter the mark from both parties in the same spaces. This cuts against the basic principle of trademark law, that a trademark is meant to signify a single source for goods or services. By having unrestricted co-ownership, the mark becomes weaker as a source identifier and risks becoming functionally useless.

Cases like *Zioness Movement, Inc.* demonstrate the importance of securing ownership obligations to a trademark early. This is particularly important for companies that may transfer their assets and/or have frequent turnovers in personnel. Trademark practitioners often advise that businesses should apply for federal trademark protection as early as possible. While there are many reasons to give that advice, this case provides a new one: secure ownership before the rights become muddled.

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