

Christopher Kelly Comments on Trademark Infringement Suit Against Off-White

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Wiley Rein partner Christopher Kelly, chair of the firm's Trademark Practice, was quoted by *WWD* in a July 9 article about a trademark infringement lawsuit brought against fashion brand Off-White LLC by advertising and creative agency OffWhite Co. The advertising agency claims that it used the name well before designer Virgil Abloh founded his fashion label.

According to OffWhite Co.'s suit filed on July 7 in New York federal court, the names' similarity and the fashion brand's quick rise to worldwide recognition has led to the advertising agency not being able to rely on the #OffWhite hashtag to advertise its own work on social media. The article notes that while Off-White LLC has applied to trademark "Off-White", it may be a tough case to make for OffWhite Co. since the respective companies offer generally distinguishable goods and services, are generally found in different trade channels, and are directed toward different customers.

"If these parties operated in the same space, sold to the same consumers, and had a more compelling relatedness, this would be a very different case," said Mr. Kelly.

Regarding social media advertising, Kelly said that hashtags are frequently trademarked now, but for a while since the early days of online marketing, advertisers had viewed them more as a functional aspect of the Internet.

"This is a case where Off-White LLC has gotten very famous, very fast, that it has more recognition on social media than does [OffWhite Co.]," said Mr. Kelly.

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Practice Areas

Trademark

The article can be found here (*subscription required*).