LEGAL KITTY™ CHEAT SHEET

# The Name Check

*Before a name goes on a podcast, an album or a hoodie.*

## KEY PRINCIPLES

1 **A trademark points to a source.**
It tells people who a product comes from. It doesn't lock up the words. Rights come from use; registration adds nationwide presumptions.

2 **One title isn't one trademark.**
The USPTO won't register the title of a single creative work (TMEP §1202.08). A series title can be registered, and so can a brand on goods.

3 **Art gets breathing room.**
For titles of expressive works, courts often ask if the title has any artistic relevance and, if so, whether it explicitly misleads (Rogers).

4 **Merch changes the rules.**
When a name is used as a brand on goods, the free-speech filter drops away (Jack Daniel's, 2023). Plain likelihood of confusion decides.

## KEY EXAMPLES Real cases, from the guide

*A registered title vs. a hit album*
Pending, 2026

A small creator's registered show title vs. a major album; the album side says a title is expressive.

**FOR YOU** **Your registration date and proof of use matter.**

*Jack Daniel's v. VIP Products*
U.S. Supreme Court, 2023

A dog toy used a mark as its own brand, so the Rogers test didn't apply.

**FOR YOU** **Put a name on merch, get ordinary scrutiny.**

*Rogers v. Grimaldi*
2d Cir. 1989

The origin of the free-speech filter for titles of artistic works.

**FOR YOU** **A title that is art usually survives.**

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KEY CLAUSES

# Red flag, green flag

*Push back on the red. Ask for the green.*

| | RED FLAG · PUSH BACK | GREEN FLAG · ASK FOR |
|---|---|---|
| SEARCH | Google only | USPTO search, with sound-alikes, in your classes |
| STRUCTURE | One-off title | Series name or brand on goods |
| STRENGTH | “Best Podcast” | Invented or arbitrary name |
| MERCH | No 12-month goods plan | Goods listed; clearance search budgeted |
| PROOF | No record of first use | First use, sale, episode dated |
| HANDLES | Domain grabbed “later” | Domain and handles secured the same day |

Condensed from the SHOWGIRL guide. Teaching examples, not forms.

GO DEEPER

SHOWGIRL, the free web guide to naming.
Free at legalkitty.com/guides

Full guide: DM **SHOWGIRL**
This sheet: DM **NAMECHECK**

*Don’t sign it till you read it.*

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