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## Shark Tank. Minnow Diligence?

By [Steve Baird](#) on February 28th, 2012

For those who haven't seen or heard of it yet, [Shark Tank](#) is an [ABC reality television series](#) in which entrepreneurs pitch investment proposals to a panel of five wealthy and feisty "sharks" — including these independent and successful investors: [Robert Herjavec](#), [Barbara Corcoran](#), [Kevin O'Leary](#), [Daymond John](#), and [Mark Cuban](#).

Shark Tank's third season began last month, and my boys convinced me to watch [Episode 301](#) with them this past weekend — I'll have to admit I was more than a little entertained.



Because intellectual property issues can play such an important role in sizing up a business plan and investment opportunity, as you might imagine, the show includes many references and questions about whether the entrepreneur has procured any exclusive intellectual property rights to support the business plan. The problem, of course, for those of us who enjoy probing the details of any claimed intellectual property rights, is the limited amount of time devoted to any meaningful due diligence of the claimed rights.

The segment of Episode 301 that I found most interesting is the one depicted above where [Pat McCarthy](#) offered the "sharks" a meager 5% share of his company [Liquid Money](#) for \$100,000. Each of the investors uttered the words "I'm out," and bailed on McCarthy's pitch for various reasons, except for Daymond John, who countered with an offer of \$100,000 for 80% of the company, following McCarthy's representations that he "owned the name" MONEY and that it is "[trademarked](#)" in the fragrance class. Most of the "sharks" seemed to agree that the "obvious" business path should be to license the trademark, and that his rights in the name is the *only* thing of value — not the fragrance itself.



Turns out, my trip to the USPTO's online trademark database during a commercial break revealed a bit of, well, puffing, let's say. My search for live marks in Int'l Class 3 (the class covering fragrances) revealed only five federally-registered marks containing the term MONEY, one pending trademark application, and perhaps most importantly, none appear to be for the MONEY trademark claimed by McCarthy:

1. [MORE POWER FOR LESS MONEY](#)
2. [KASH MONEE](#)
3. [MONEY THE SCENT OF AMERICA](#)
4. [COLONIA LUCKY DON DINERO LUCKY MR. MONEY COLOGNE DE CRUSELLAS \\$](#)
5. [MONEY HOUSE BLESSING](#); and
6. [YOUNG MONEY](#)

Busted. [Trademark types will appreciate the irony in that most associate the McCarthy surname with the leading trademark law authority: [McCarthy on Trademarks and Unfair Competition](#).]

In any event, consistent with [Pat McCarthy's](#) oral representations in the Shark Tank, his [Liquid Money](#) website further represents: "MONEY IS A REGISTERED TRADEMARK OF LiquidMoney, Inc. | ©2012 | ALL RIGHTS RESERVED."

Given my search results, a good question might be, registered where? Croatia? [you need to watch the segment to appreciate this question]

In fact, the only trademark record in the entire USPTO database for a company having "liquid" and "money" in the name is Money Liquids, a company that once owned a federal trademark registration for [MONEY LIQUIDS](#) in connection with wine.

So, my humble suggestion to the producers of Shark Tank would be to employ the talented services of an IP shark, even if only behind the scenes, someone capable of sniffing out bogus intellectual property claims in real time, kind of like blood in the water. Or, at least train the other "sharks" to use the USPTO database so they can readily verify any IP claims themselves.

Basically, I'd like to see more than a minnow amount of due diligence, especially when it could be at the fingertips of any "shark" equipped with a laptop or smart phone.

