

New York's Infamous "Naked Cowboy" Loses Trademark Lawsuit

by Donald Scarinci

A federal judge has dismissed a [New York entertainment lawsuit](#) brought by Robert Burck, better known as the "Naked Cowboy." Burck filed the trademark litigation against CBS after one its soap operas featured a character that also played the guitar in nothing but a cowboy hat and his underwear.

The Times Square street performer, who the New York Tourism Department reports is more popular than the Statue of Liberty, has created a lucrative brand. According to the [Hollywood Reporter](#), the street performer has secured corporate sponsorships, merchandising deals, and endorsement agreements.

The Naked Cowboy also appears to vehemently protect his intellectual property. Burck filed his first trademark application on Oct. 24, 2000 and most recently renewed his registration on May 25, 2010. In 2010, he unsuccessfully filed a lawsuit against the Naked Cowgirl, a female street performer who he claimed was trying to make money off his brand.

In his latest lawsuit, Burck alleged that CBS infringed his trademark and damaged his brand in the amount of \$1.5 million when the soap opera *The Bold and the Beautiful* featured a character named Oliver, who also played guitar wearing only briefs and a cowboy hat. After the episode aired, CBS featured a clip on its YouTube channel with the title, "The Bold and the Beautiful — Naked Cowboy," and purchased targeted adword advertising using the term "naked cowboy."

In dismissing the case, Judge Barbara Jones was quick to point out that the mark never appeared anywhere during the show. While the network did use the mark in the YouTube clip's title, the judge determined that this did not constitute "use in commerce," as is required to sustain a trademark infringement claim.

"It is clear that CBS used the phrase in an effort to describe the contents of the video clip, not as a mark to identify the source of the video clips," she wrote.

Jones also specifically noted that the costume used in the soap opera contained "none of the distinctive characteristics of the Naked Cowboy costume," which included the use of his name, the word "tips," and the \$ symbol on his signature briefs.

"The Naked Cowboy costume is indeed distinctive, but ... the similarities between Oliver's costume and the Naked Cowboy costume are minimal at best," she wrote.