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Tacos, Trademarks, and the Pursuit of Happiness

Taco Bell has beef with Taco John's, and instead of being seasoned and ground, this beef is about trademark law. Since 1989, entities associated with Taco John's have owned a federal trademark registration for the term "Taco Tuesday." So, not only is "Taco Tuesday" a term commonly used to denote eating folded fried tortillas filled with various mixtures on the day following Monday, it is also a trademark owned by Taco John's in every state but New Jersey; there, it is concurrently owned by Gregory's Restaurant and Bar. On Tuesday, May 16, 2023, Taco Bell filed a Petition for Cancellation regarding the Taco John's "Taco Tuesday" trademark.

Taco Bell's petition is not the first time the ability to trademark "Taco Tuesday" has been in national headlines. In 2019, NBA superstar LeBron James attempted to claim rights in the mark, but the United States Patent and Trademark Office ruled, without referring to Taco John's, that the term "Taco Tuesday" is too much of a "commonplace term" to qualify as a trademark. Now, four years later, Taco Bell is directly challenging Taco John's and their trademark of "Taco Tuesday."

Trademark law does not recognize a trademark as valid if the trademarked term is generic. Taco Bell's petition includes two claims: first, the term "Taco Tuesday" has become generic; second, Taco John's has abandoned its trademark through its conduct. To support these claims, Taco Bell cited a recent survey purporting that 86% of consumers nationwide believe "Taco Tuesday" is a common name not associated with any company. Additionally, Taco Bell cited a separate decision by the Trademark Trial and Appeal Board which stated, "Taco Tuesday" is a "very commonplace term that refers to having tacos and drinks on that particular day of the week." *In re Monday Night Ventures LLC*, Ser. No. 88817107 (TTAB, Nov. 28, 2022), at 21.

Taco Bell's petition is as much a legal document as it is witty branding at a competitor's expense. Taco Bell asserts in its Notice of Cancellation that it, and the unassuming public, may be subjected to legal action and "angry letters" if they say "Taco Tuesday" without the permission of Taco John's. Taco Bell decries this as a violation of "the pursuit of happiness." Taco Bell goes on to state that "chaos" would ensue if others are allowed to gain exclusive rights to otherwise common phrases. Clearly, Taco Bell is taking pleasure in attempting to cancel a competitor's trademark while also tongue-in-cheekily painting itself as a guardian of liberty and justice. If the Trademark Trial and Appeal Board applies the same logic that was used to deny LeBron's attempt at trademarking this term, then "Taco Tuesday" can once again be freely used and uttered. [Taco Bell's filing can be found here](#). *Taco Bell IP Holder, LLC, v. Taco John's Seasonings*, In re Registration No.: 1572589, Petition for Cancellation (T.T.A.B. 2023).

