



## **TRADEMARKS AND SOCIAL MEDIA: ENFORCING RIGHTS WITHOUT ALIENATING YOUR CUSTOMERS**

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Aggressively enforcing one's rights in social media might not be the ideal approach for trademark owners anymore. How are social media changing our approach to trademark enforcement?

The rapid growth of social media calls into question the notion that it is essential to prevent all unauthorized use of a trademark, whether such use is made in good faith or with less honest intentions.

In fact, the traditional role of trademark owners "controlling" their trademarks through authoritative one-on-one communication with third parties making unauthorized use of a trademark is less effective in the social media world. Consumers now discuss, share and criticize trademarks, products and company marketing strategies among themselves almost instantaneously. Heavy-handed approaches may create extremely negative repercussions should a company act in a manner displeasing to consumers.

As it is almost often impossible and unthinkable to prevent the public from making comments that may be unfavourable to trademark owners, trademark protection in social media requires companies to utilize new and innovative methods to protect their brands and avoid alienating their customers. In recent years, a number of companies with overly aggressive approaches in the legitimate defense of their rights have learned at their own expense that the rules have changed.

### **Hasbro Defends "Scrabble"**

In 2008, a multiplayer remake of the classic Scrabble board game called Scrabulous delighted nearly 500,000 Facebook users on a weekly basis. In light of the new game's popularity, Hasbro decided to institute proceedings against Facebook and the creators of Scrabulous for violation of its exclusive rights. Following this action, a Facebook group was created by users to protest against Hasbro's conduct, which

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quickly grew to 55,000 members. Some users even claimed to have "burned their Scrabble board game" to protest against the actions taken by Hasbro.

It is clear that no company wishes to generate this type of reaction with regard to its brand and associated products. The question is therefore raised as to whether or not more creative solutions could have been foreseen, such as a partnership with the creators of Scrabulous to avoid the negative response from thousands of users of the electronic game.

### **BP and its Management of the Crisis Surrounding the Oil Spill in the Gulf of Mexico**

In 2010, in the midst of the BP crisis concerning the oil spill in the Gulf of Mexico, an individual registered the Twitter account @BPGlobalPR to parody BP's efforts in maintaining its brand image. BP contacted the user immediately to ensure that it be clarified on the Internet that the Twitter account was not in fact an official account administered by BP. Although the request was not illegitimate in itself, it provoked a wave of indignation amongst users of social media with regards to BP and surely increased the popularity of the unofficial Twitter account. Would a more creative solution have been an option under the circumstances?

### **Creative Solutions to Meet the Demands of the New Playing Field**

The following practical case will help demonstrate that creative solutions may exist and be beneficial for today's companies. In 2008, the Coca-Cola Company discovered an unofficial Facebook page relating to Coca-Cola products that was created by two fans and followed by close to 2 million users. Given that certain users were probably misled regarding whether the page was an official Coca-Cola Company page, the company decided to approach the creators of the page and invite them to join the Coca-Cola team, as opposed to instituting proceedings against the individuals or requesting that Facebook remove the page. To this day, these two individuals are responsible for the management of the fan page, which now has tens of millions of members.

These three cases clearly demonstrate that in the emerging era of social media, companies must carefully consider the best way to protect their brands in social media. The importance of protecting company brands remains the same, but the manner in which companies choose to protect their brands must evolve. They must move toward innovative alternatives as to protect their brands while ensuring that consumers remain enthusiastic about their products or services.

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