

How to play the game of social media brand dodge ball

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It's a familiar scene, two players enter the arena. One armed with a red ball, the other seemingly defenceless. But unlike a normal game of dodge ball, more players quickly enter the ring, each with a red ball, all with the same aim - to take out the seemingly defenceless player.

What does the empty handed player do? Lie down and get pummelled? Attack senselessly? Or strategise and take out the necessary players one at a time?

Social media and brands

The above scenario has a distinct parallel with the unauthorised use of trade marks or brand names on today's social media platforms. The player with the ball is the common infringer who makes unauthorised use of another party's proprietary trade marks and the ball represents the potential harm that can be caused to the trade mark holder. The problem (and perhaps the most amazing feature) with social media is its ability to seamlessly spread content at a mind blowing rate.



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Thus in little to no time the rights holder is faced with potentially hundreds of infringers all with the potential to cause irreparable harm to its or brand name. Like the empty handed player, what do you do?

Stop. Think. Act.

Whilst dealing with multiple infringers in the social media arena may give one the sense of hopelessness or anger, it is very seldom that the player who simply lies down or attacks without strategising will win a game of dodgeball. The one who wins is the one who plays it smart, choosing their battles and using their available skills and tools to their advantage.

The best tool that you can have in enforcing your trade mark rights in the social media arena is a registered trade mark right or, at the minimum, proof of a pending application. Having a registered trade mark is like having that seven foot friend on your side with biceps so large National Geographic named a mountain range after them. A pending application is like their slightly smaller cousin. Whilst the dedicated intellectual property department of the various social media platforms are willing to consider alternative rights such as common law rights, these certainly do not carry the same weight as proof of a registration.

So now you have your registration certificate (or your seven foot friend) you can win all the battles, right? Not necessarily and sometimes it's also not necessary or strategically clever. Social media is all about the internet user and that user has the power to either promote or destroy your brand. Consumers who are passionate about brands often are inclined to make use of their favourite brands in their social media, by, for example, placing the logos of certain brands on their social media pages.

Although this technically can be seen as an infringement, the use by the consumer in this way can often be a useful advertising tool. In such circumstances, it is best to stop and think before acting overly aggressively towards such users and lodging a multitude of complaints. A better strategy is to actively engage such users and request, amicably, that the use of the trade mark be stopped or limited- after all your consumers are on your team and are your biggest supporters.

Of course, if the unauthorised use of your trade mark is by a competitor or someone who is causing harm to your brand then it's time to bring in "that friend".

Remember, whenever you come across the unauthorised use of your brand in a social media arena, stop and think about the potential harm that may be caused to your brand by the user versus the potential harm that could be caused to your brand by alienating consumers. Choose your battles, wisely, bring in your "friend" when necessary, and in no time, you will be a dodge ball world champion.

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