

Don't Get "Crushed": Three Ways to Avoid Being a Bully While Protecting Your Trademarks

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Protecting a trademark can often create as many new problems for a brand owner as it solves, if not handled properly.

Recently, King.com, owner of the popular game app Candy Crush Saga, received an avalanche of negative PR over the aggressive tactics it has used to protect its trademarks. The company reportedly sent numerous threatening cease-and-desist letters to smaller game developers that use the terms "candy" and "saga" in connection with their games. This sets up a common "David versus Goliath" scenario that we have seen many times in recent years, including when a Starbucks cease-and-desist letter to a small Missouri brewpub over the pub's use of the term "Frappuccino" went viral.

The problem brand owners face is that U.S. trademark law requires a trademark owner to police its trademarks or risk losing the mark. This duty to police your trademarks extends not only to identical marks, but to any marks that could be considered confusingly similar. So how do you protect your brand without being branded a trademark bully?

- 1. Choose your battles wisely and don't overreach.** Distinguish between those marks that actually infringe your mark and those that are only tangentially connected.
- 2. Don't be overzealous.** Small, localized businesses that do not compete with you should be addressed with a softer touch, which can be accomplished by sending a "nice" cease-and-desist letter explaining why trademark law requires that you contact them.
- 3. Choose your words carefully.** Don't put anything in a cease-and-desist letter that you would not want the whole world to see because it can easily be posted on the web.

At the end of the day, it's a balancing act - one that King.com, appears to have toppled.

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