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[When Silence is Not Very Golden](#)

July 20, 2011 by [Steve Baird](#)

While it is true that *not* responding to a trademark cease and desist letter is always an available option, I tend to believe it is rarely a good choice. The strategy of silence seldom makes the issue go away, it often ends up costing the recipient more money to resolve the issue, and it is more likely to place the trademark enforcement target in a less favorable business and legal position in the end.

So, it is surprising to me how many recipients of trademark demand letters actually ignore or seriously consider ignoring the cease and desist letter and doing nothing. Perhaps more surprising is [when I hear about lawyers recommending silence as a serious option](#), apparently hoping that the trademark owner isn't serious, that it won't smell blood in the water, that it will get tired of chasing the enforcement target, lose interest, and/or not follow through on its "trademark bullying" demands.

Instead, a more plausible reaction to the silent treatment comes from a now highly agitated and frustrated trademark owner who files a federal district court trademark infringement complaint, who may then obtain a default judgment, permanent injunction, order to pay damages, order to pay the attorneys fees of the trademark enforcer, and even seek a contempt of court order for failure to honor the previous court orders.

Of course, one of the serious pitfalls of choosing silence is that it forces others (both adversaries and the court) to fill in the blanks, and it actually can speak volumes, perhaps communicating incorrect and/or very unintended messages to the trademark enforcer:

1. I will both run and hide from facing responsibility for my actions;
2. I can't be trusted and I don't operate a reputable business;
3. OK, I'm guilty and I have no valid defense to your trademark infringement claims;
4. I actually intended to confuse consumers and benefit from that confusion;
5. In fact, I'm profiting nicely from my actions while unfairly trading on your goodwill;
6. I don't care if my silence ends up costing you more time, effort, and expense;
7. I'll call your bluff and simply dare you to sue me;
8. If you sue me, I'll ignore that too; and
9. Maybe I can't or won't afford to respond or defend myself or my company.



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While the last listed possible message above may, in fact, be the only truly correct interpretation of the silence, unfortunately, communicating it tends to mimic blood in the water with a nearby circling shark. Far better to leave your resources a mystery while conveying an intelligent, serious, and direct written response (assuming there is a valid defense to the demands). Doing so will go a long way toward dispelling anyone's reasonable belief of the other possible eight messages.

While there is no doubt that sole business owners and entrepreneurs can have limited budgets, it is hard to believe they are unable to afford at least one intelligent response by an experienced trademark attorney.

In my experience, nothing beats a prompt and intelligent response that details the weakness or baseless nature of the trademark infringement claims asserted in the demand letter. But, I'll save for another day my thoughts about the actual anatomy of an intelligent trademark response letter.

In the meantime, where do you stand on the issue, do you favor and/or recommend silence or a detailed response to trademark cease and desist letters?

