

*A Winthrop & Weinstine blog dedicated to bridging the gap between legal & marketing types.*

## [Actual Notice and Imputed Knowledge](#)

September 5, 2011 by [Steve Baird](#)

My son snapped this photo during a recent family trip to Washington, D.C. It almost has become a hobby for him to capture people in the act of ignoring a sign's specific request or doing exactly what a sign purports to forbid. While some retreated from the water in the [World War II Memorial](#) when they saw a camera pointed in their direction, it appears, others just can't help themselves, despite having actual knowledge of the opposite instruction:



In any event, it got me thinking about notice and the difference between and consequences of actual notice and constructive notice in trademark disputes.

- Constructive Notice. It may surprise some to learn that we are all deemed to be aware of the registrant's ownership claim for each and every mark that is federally registered on the Principal Register. See Section 22 of the Lanham Act (15 U.S.C. 1072). This reality is perhaps [another good reason to conduct trademark searches \(at a minimum\)](#) before adopting and using words, symbols or devices (don't forget about [non-traditional trademark](#) devices) that might function as trademarks. It doesn't matter that you or your client may not have actual notice of the ownership claim or trademark rights, if the use results in a likelihood of confusion, there is trademark infringement. So, you might as well actually know what you are presumed to know through constructive notice.
- Actual Notice. The danger with actual notice is, what do you do with it once you have it? Actual notice of trademark rights can lay the groundwork for a trademark owner pursuing a willful trademark infringement claim that -- if proven -- might lead to an award of enhanced monetary relief and recovery. The best defense to a claim of willful trademark infringement is to have a well-reasoned opinion by competent trademark counsel in your back pocket, in the event a trademark claim is asserted. As a result, if you're going to search, and create actual knowledge of trademark rights, best to obtain an appropriate opinion from counsel that the planned use is clear and does not violate the rights of another.

If you're interested in learning more on this subject, you might consider signing up for the upcoming 90-minute live webinar, sponsored by Strafford Publications, Inc., on October 5th entitled [Trademark Clearance Opinions](#).

Labor Day Bonus: The first two commenters to this post will earn free attendance to the webinar.

