

Articles

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"CANDY" Crushed

From taxi cabs, to subways, to airplanes, to your dinner table, it was virtually impossible to avoid "Candy Crush Saga" in 2013. With over a half billion downloads on Facebook and mobile devices, Candy Crush was the year's most downloaded gaming app.

However, Candy Crush and its owner Kings have also received publicity for another reason. Perhaps due to the overwhelming success of Candy Crush, in February 2013, Kings attempted to register the term "CANDY" as a standard character mark in the United States – a bold brand protection move that, paradoxically, may have harmed the brand by earning the company a negative reputation as a "trademark bully."

Trademark licensing deals for clothing, housewares, electronics, and accessories have been profitable for other gaming app developers – such as Rovio Entertainment Ltd., creators of the app "Angry Birds," with over a dozen registered trademarks in the U.S. for "ANGRY BIRDS" and related marks. So, it's not surprising that Kings would also try to obtain trademark protection. However, what was particularly problematic for Kings and its application for "CANDY" was the term's perceived "genericness," and the fact that Kings was being fairly aggressive in its enforcement, sending strongly-worded cease and desist letters to tiny start-up mobile app developers (e.g., Benny Hsu, maker of "All Candy Casino Slots," or "Candy Slots" for short) and seeking removal from app stores.

By early 2013, the blogosphere was flush with articles describing King as a "trademark bully," and even a "trademark troll." In addition to the negative commentary, several developers created online games mocking King's efforts to trademark its app name. In its own defense, King drew parallels to mobile gaming apps like "Clash of Clans," which had been copied and ripped off by mobile apps offering similar game play and similar visual elements due to the rise in its popularity.

By late February 2014, Kings had decided to abandon its U.S. trademark registrations, perhaps as a result of the negative publicity. (See Serial No. 85842584, IC 009, 025, 041) (abandoned February 24, 2014). Other Internet/mobile brand owners, such as Facebook and Pinterest, have also come under attack for attempting to register and enforce marks considered to be "generic," e.g., "TIMELINE," and "PIN," respectively. However, these companies have not succumbed to the pressure. Candy Crush, on the other hand, recently announced an IPO seeking a \$7.6 billion valuation, and perhaps wanted to avoid unnecessary distractions.

Of course, Candy Crush as an app is still going strong, and the negative publicity to Kings may abate after abandoning the marks. However, similarly-situated mobile app developers may look to Kings and Candy Crush as a "cautionary tale" of what can happen to an emerging brand when it adopts an aggressive strategy and "overreaches" in the brand protection arena.

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