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## [Does Size Matter, When Identifying a "Trademark Bully"?](#)

Posted on January 31, 2011 by [Steve Baird](#)

Who says that being a large corporate trademark owner is one of the prerequisites to earning the emotionally-charged, pejorative, and [ill-defined](#) label "[trademark bully](#)"?

Well, the [original directive](#) to the USPTO appears to assume that "[trademark bullying](#)" is a one-way street, disfavoring only large corporate trademark owners, and ignoring the possibility that individuals and small businesses are equally capable of deserving scrutiny for their abuses of the trademark system, by originally focusing on "the extent to which small businesses may be harmed by litigation tactics by corporations attempting to enforce trademark rights beyond a reasonable interpretation of the scope of the rights granted to the trademark owner."

Interestingly and easily overlooked, [IPO noted in its January 7, 2011 submission](#):

[O]n December 9, 2010, the Copyright Cleanup, Clarification, and Corrections Act of 2010 was signed into law, becoming Public Law No: 111-295. It contained a provision removing the "by corporations" language from the Trademark Technical and Conforming Amendments Act of 2010, such that the law now requires the USPTO to examine "(1) the extent to which small businesses may be harmed by litigation tactics attempting to enforce trademark rights beyond a reasonable interpretation of the scope of the rights granted to the trademark owner. . . ."

Indeed, for some reason, even the USPTO's most recent restatement of the directive, [here](#), fails to note what IPO indicated [Congress has deleted from the directive](#).

In addition, [IPO also commented](#) that large size isn't necessarily a good predictor of bad behavior:

"In addition, the pejorative and emotionally charged term "bullies" suggests that the trademark owner in question is a large organization that is using its greater size and economic power to unjustly "push around" a smaller organization or individual. In the experience of IPO members, this is rare, and most large organizations take action in cases upon careful reflection of the facts and development of a strong business case analysis and justification for the litigation expense.



Indeed, several IPO members noted a trend towards more aggressive assertion and defense of trademark claims by individuals and small organizations, particularly where they represent themselves or have obtained legal representation on a contingency basis."

This all leaves me wondering whether IPO had in mind, at least as one example of this apparent role-reversal, a recent trademark dispute between 3M (an IPO member) and a *pro se* individual defendant named Pradeep Mohan, wherein Mr. Mohan was found liable for willful trademark infringement of 3M's well-known Littmann stethoscope brand and mark, operating an "unethical" Internet business out of his Santa Cruz residence.

[Susan Feyder](#) of the Star Tribune [reported](#) on 3M's win back in December, and the decision is [here](#).

A couple of weeks ago the U.S. District Court for the District of Minnesota (The Honorable Ann D. Montgomery) ordered Mohan to pay and granted to 3M \$838,000.00 as reasonable attorneys fees under the [exceptional case](#) provision of the Lanham Act, reducing 3M's original request of \$942,063.48 by \$104,063.48. A pdf of Judge Montgomery's January 19, 2011 Order is [here](#).

Any bets on whether 3M actually banks any of this award?

And, what do you think about size, does it matter? In other words, are small businesses and individuals also capable of earning the "trademark bully" label, what ever that may mean?

