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## [AIPLA Comments on USPTO's "Trademark Bullying" Survey](#)

Posted on February 14, 2011 by [Steve Baird](#)

You may be interested to know that the American Intellectual Property Law Association ([AIPLA](#)) did file a timely response on January 7, 2011, to the USPTO's [original request for comments](#) regarding whether "[trademark bullying](#)" is a significant problem deserving attention, see [here](#).

Hat tip to Jackie.

Let's just say, it is starting to become clear why the USPTO [dropped](#) the phrase "[trademark bullying](#)" in favor of "aggressive litigation tactics" -- as both [IPO](#) and AIPLA view the phrase as unfair and pejorative:

AIPLA believes that this definition unfairly characterizes trademark owners who assert their legitimate rights under the law and assumes ill intent without defining what might be considered "harassment" or "intimidation." Reasonable minds can differ as to the proper scope which should be afforded to marks and whether a likelihood of confusion and/or a likelihood of dilution may exist.

While AIPLA does not condone abusive tactics, aggressive enforcement of a trademark does not automatically equate to abuse. Use of the pejorative terms "bullies" and "bullying" is misleading and unfair in light of trademark owners' duty to police their marks and protect consumers from marketplace confusion, as discussed more fully below.

Here are some additional, [money quotes](#):

AIPLA advises against regulation aimed at trademark abuse in favor of existing remedies. Trademark enforcement protects consumers, and overly aggressive litigation tactics are no more pervasive in trademark cases than other civil litigation.



After considering the issue, AIPLA has concluded that regulation, legislation, or other activity specifically aimed at abusive trademark enforcement efforts would be ill-advised. Most importantly, trademark owners are encouraged and expected to aggressively enforce their trademarks to further the public interest and protect consumers from marketplace deception and confusion. While AIPLA agrees that overly aggressive tactics which rise to the level of abuse or “bullying”—as we understand that term—should not be condoned, existing remedies are available to deter and address such behavior.

Further, enacting additional measures to combat trademark abuse runs the risk of contravening the fundamental purpose of the Lanham Act: consumer protection. Specifically, such measures would be: (a) contrary to the public interest in avoiding marketplace confusion; (b) inconsistent with long-standing principles of trademark law which encourage, and even require, trademark owners to aggressively police their marks; (c) incapable of consistent application; (d) addressing situations which have not been shown to be a significant problem; and (e) unnecessary in view of existing statutory provisions, civil procedure rules, and the inherent power of courts to protect against meritless claims.

We all continue to await the release of INTA's [comments](#) to the public.

