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[A Legal Obligation to Enforce Trademark Rights?](#)

September 12, 2011 by [Steve Baird](#)

When trademark owners are accused of bullying and shamed in public, a common and knee-jerk defensive response to justify the cease and desist letter or enforcement action is: "We have a legal duty and obligation to police and enforce our trademark rights." And, some might even go on to say: "If we don't enforce our mark against this use, our trademark could become generic."

Indeed, Monster Cable CEO Noel Lee -- someone very experienced in receiving accusations of trademark bullying on behalf of his company -- is quoted as saying:

["We have an obligation to protect our trademark; otherwise we'd lose it."](#)

Actually, as to the point about genericide and the feared complete loss of trademark rights, I think we should all take a deep breath and ask how realistic is the risk of genericide for the trademark in question, as we have done with the [hyper-active-blanket-concern over the verbing of brands and trademarks](#).

Now, as to the point about legal [obligations](#) and [duties](#), this characterization seems more than a bit over-blown as well.

Let's make no mistake, there are real consequences of trademark owners putting their heads in the sand and not policing and enforcing their trademark rights, but clearly, no one is breaking the law or going to jail, and no one is going to incur civil or criminal liability for merely being a lazy or inattentive trademark owner who fails to police. Consequences yes, liability and law-breaking, no.

As we have said before, [in the context of Twitter's once laissez-faire approach to trademark enforcement](#), in most cases, a failure to police or enforce has a direct impact on the scope of rights in a particular trademark, but the genericide worst-case-scenario risk often can be an overblown form of drama.

The skill and experience of a talented trademark type, of course, is being able to discern when the risk of genericide is real and when it is faux.



So, if your company or client is being sized up as a [trademark bully](#), and the shoe doesn't fit because you're engaged in legitimate trademark enforcement activities, a more intellectually honest and helpful defense to the negative bully label might be to focus on explaining your genuine concern over [likelihood of confusion](#), or [likelihood of dilution](#) (if the mark in question is famous), instead of blaming the law and our legal system, and hiding behind legal "duties" and "obligations" that don't exist.

If you're finding this difficult to do, maybe the shoe fits afterall, and you end up living with the label.

