

Can You Trademark "Boston Strong"?

by Donald Scarinci

In the wake of the unthinkable tragedy at the Boston Marathon, debate is raging over whether companies can and should seek to trademark the city's resilient rallying cry, "Boston Strong." The phrase has popped up all over Boston in recent days from the Green Monster at Fenway Park to signs left at the bombing memorial.

Not surprisingly, "Boston Strong" also surfaced on [trademark applications](#) submitted to the U.S. Patent and Trademark Office. A Boston resident and a Massachusetts company have filed applications to use the phrase on t-shirts and other clothing. Boston Beer Company, which brews Samuel Adams, has filed an application to rename its Marathon themed beer "Boston Strong" 26.2 Brew.

While many have criticized the companies for trying to capitalize on a horrible tragedy that resulted in several deaths and hundreds of injuries, all of the applicants maintain that their motives are pure. Boston Beer has pledged to donate its profits to Marathon-related charities and allow other beverage makers to use the trademark so long as they also donate all profits to charity.

After facing significant backlash, Born Into It, the company behind the popular Chowderheadz sports gear, took to its [public blog](#) to explain its actions. The company stated that it filed the trademark application as a "defensive measure to protect not only us but others from being bullied by another party trying to use this trademark in bad faith." It also pledged to donate a percentage of its profits to the One Boston Fund.

While many are debating whether these companies should pursue trademark registrations, the larger question is whether the U.S. Patent and Trademark Office will allow them in the first place. In order to successfully register a trademark, an applicant must be able to show that the mark is distinctive. Because trademarks are intended to identify the source of a product or service and to distinguish it from competitors, generic terms that have entered the public domain are generally denied trademark protections.

In recent days, "Boston Strong" has been emblazoned on t-shirts, posters, hats, and other items sold by numerous companies and become synonymous with the city's recovery efforts. Therefore, it may be difficult for any of the companies to show that the mark is uniquely associated with their particular product. Just like trademark applications related to the phrase "9/11" were denied after the World Trade Center attack, the "Boston Strong" mark will also likely face an uphill battle.