

WHAT INTELLECTUAL PROPERTY LAWYERS CAN LEARN FROM BARBRA STREISAND, SEPP BLATTER, AND THE "COCA-COLA CRY-BABY": DEALING WITH "TRADEMARK BULLYING" IN SOUTH AFRICA

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SUMMARY

This article suggests some pause for reflection amongst intellectual property lawyers, and for serious consideration of the words of an internationally-renowned IP law expert: "Possessing a right does not mean that it is a good idea to enforce it always, and to the hilt. Discretion may be nine parts of possession". It provides some prominent, recent examples of trademark bullying or overly-aggressive enforcement in the IP law context. These examples are mainly from other jurisdictions but they are directly relevant to some of the IP law challenges present in South Africa at the moment. The article further examines why lawyers and rights' holders engage in trademark bullying (*why* it's done), and start to deal briefly with some of the legal implications. A future article is to examine the legal aspects of trademark bullying in much more detail and considers its legitimacy within the context of IP law, more generally, and some other areas of law, more specifically.

KEYWORDS: Trademarks; Trademark infringement; Intellectual property; IP rights; Overly-aggressive enforcement; Rights holder over-reach; Litigation strategy; Cease-and-desist letters; Strike suits; 'Trademark extortion'; 'Duty to police'; Streisand effect; Ambush marketing.

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