

Trademark Monitoring: What Girl Scout Cookies Can Teach Us About Intellectual Property

Article

Amundsen Davis Intellectual Property Alert

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It's cold in southeastern Wisconsin, and that can mean only one thing—it's nearly Girl Scout Cookie season and time to restock my favorites for the year. On learning that the cookie Toast-Yay!® will be retiring, I wondered what's coming next year.

Like any good trademark nerd, I checked the United States Patent and Trademark Office (USPTO) database for recent cookie-related filings by Girl Scouts of the United States of America. This practice, known as trademark monitoring, is useful for more than just cookie reconnaissance—it can provide critical information for trademark owners.

Benefits of Trademark Monitoring

Trademark monitoring is a valuable tool in a trademark owner's toolbox. Trademark rights are negative rights: They do not give a trademark owner the right to use a trademark; rather, they give the owner the right to stop others from using the same or a confusingly similar trademark in connection with similar goods/services. Without monitoring, it can be hard for a trademark owner to take full advantage of these negative rights.

Whether your trademarks are registered or you rely on common law protection for your names and brands, benefits of trademark monitoring include:

- **Spotting potential infringement early.** Googling and monitoring online marketplaces can help trademark owners spot potentially infringing acts, but monitoring filings with trademark offices can shine light on potential future infringement.
- **Keeping legal costs low.** It's easier and generally cheaper to stop potential infringement before it starts.
- **Avoiding litigation.** Knowing about potentially infringing sooner may allow trademark owners to address the matter using administrative proceedings at with trademark offices, such as opposition and cancellation proceedings

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available with the USPTO, instead of resorting to litigation.

- **Peeking into the future.** Monitoring new filings by competitors can signal new products, rebranding efforts, and even market expansion.

Practical Considerations for Implementing a Trademark Monitoring Program

My search for cookies was very targeted – I knew exactly what I was looking for and where I needed to look. This may be useful strategy when a specific trademark issue needs investigating. In reality, however, trademark monitoring is more of a net-casting effort, with the size of the net proportional to the cost, time, and resources spent on the process. Monitoring a global portfolio is naturally more expensive than monitoring one or two house marks in the U.S. How you choose to monitor trademarks should be appropriate for your business and budget.

Regardless of how you go about it, here are some tips for starting or continuing a successful trademark monitoring program:

- **Include general internet and social media searches.** Trademark rights result from use, so don't forget to look for these "unofficial" uses.
- **Set up alerts using your desired search engines.** Use your trademarks as keywords to get notifications.
- **Monitor online marketplaces.** Customer confusion can happen quickly when similar names pop up in online marketplaces.
- **Schedule searches as a reoccurring event and adjust the schedule to accommodate market activity.** Take more time between searches if things are quiet, but consider running searches more often if you find relevant filings or are alerted to potential customer confusion
- **Keep a current list of your trademarks (including common misspellings) and those of your competitors.** This practice helps you avoid oversight; you can't monitor what you don't know you have.
- **Check in with distributors, sales representatives, and other "in the field" workers periodically.** The people interacting with customers are often the ones who find out about potential infringement issues first
- **Take action when needed.** Don't be afraid to politely and respectfully remind others that you claim rights in a trademark.

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