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Social Shaming: Fighting Back Trademark Bullies

In September 2009, Hansen Beverage Company sent Rock Art Brewery a letter demanding that Rock Art cease and desist its use of “VERMONSTER” as a trademark for beer. Hansen is a multi-million dollar beverage corporation and Rock Art Brewery is a small brewing company owned by a husband-and-wife team based in Vermont. Hansen’s gravamen was that Rock Art’s “VERMONSTER” beer allegedly infringed on Hansen’s “MONSTER ENGERY” trademarks. Instead of capitulating, Rock Art Brewery fought back, taking to the virtual streets of the internet and galvanized public sentiment against Hansen’s. The end result was an amicable settlement agreement that allowed Rock Art to continue its use of “VERMONSTER” as it had before.

Rock Art’s success highlights a growing phenomenon in trademark law: the use of social shaming to fight an aggressive trademark enforcer. To date, most scholarly work on curtailing the over enforcement of trademarks has been focused on legal means, such as developing stronger defenses to infringement. While this is important and meaningful work, focusing on purely legal means may not assist those smaller businesses who have no access to legal resources in the first instance. In addition, a focus on legal means alone may not alter social norms surrounding overly aggressive trademark enforcement. This Article proposes that a similar focus be given to non-legal means, such as social shaming, as it has the potential for both short term and long term benefits. In the short term, social shaming may provide an outlet for small businesses to fight back against larger corporations and in the long term, it may encourage an evolution of social norms whereby large corporations limit their trademark enforcement to reasonable interpretations of their rights. Through the use of case studies, this Article will propose some guidelines for effective social shaming, which should assist small businesses in fighting back against trademark bullies. In addition, this Article will discuss the potential for social shaming to alter the normative landscape of abusive trademark enforcement campaigns.