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Bully No More: Why Trademark Owners Engage in Trademark Overreach and How to Prevent It

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At its core, trademark law exists as a tool for consumer protection. Thus, trademark owners use policing and enforcement to maintain a trademark's goodwill, which in turn protects consumers from confusion. But policing and enforcement can lead to trademark overreach and bullying—which undermine the goal of trademark law. This Comment explains that trademark owners are incentivized to engage in aggressive enforcement tactics because courts weigh enforcement efforts in favor of trademark strength. And strong trademarks receive strong protection because such marks are more likely to succeed in trademark infringement litigation. To curb trademark bullying and realign trademark law with its consumer protection purpose, this Comment argues that courts assessing trademark strength should focus on evidence of marketing strategies and consumer perception rather than trademark enforcement.

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