

How to build an IP enforcement strategy that reflects, as well as supports, your brand

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Trademark enforcement is critical to brand protection strategies, but taking too heavy-handed an approach can often do more damage than good, as backcountry.com recently learned to its cost.

Anca Draganescu-Pinawin sets out how to create an enforcement strategy that is in keeping with your overall brand identity.

For outdoor enthusiasts, the word ‘backcountry’ conjures up images of wild and rugged nature: vast forests, imposing mountains, and remote and isolated landscapes. In other words, areas of land or sea that belong to no one. For most consumers, the word also evokes the idea of escape from the built-up world of cities, fast food and stressful day jobs, to simpler times, and beautiful and unconstrained natural spaces.

These days, however, for IP professionals at least, the word also calls to mind the public backlash that was provoked by an outdoors e-tailer, after it came down too heavy on a number of small US businesses that had sought to also use ‘backcountry’ in their brand names.

How you enforce your trademarks can speak volumes about your business

Backcountry.com, a leading e-tailer of outdoors, recreational products, undertook an aggressive IP rights enforcement campaign in 2019 against several smaller businesses that had filed trademarks which included the term ‘backcountry’. Under intense pressure and with the prospect of expensive, protracted legal battles, several of these businesses felt forced to rebrand.

In other situations, this would be considered a success for the enforcing trademark holder, but in this instance, the strategy did not strengthen Backcountry.com’s brand. Instead, once the community of outdoor enthusiasts and consumers became aware of Backcountry.com’s heavy-handed tactics, a “social media firestorm” erupted. As Jason Blevins reported in [The Colorado Sun](https://www.thecoloradosun.com) in November 2019:

“More than 12,000 Facebook users have signed up as members of a [Boycott BackcountryDOTcom](#) page, following Colorado Sun reports that the Park City, Utah-based online retailer had filed federal lawsuits against four small business owners who used the name ‘backcountry’. The retailer also filed dozens of petitions for cancellation of previously registered trademarks held by businesses across the country. The social media backlash has led thousands of former Backcountry.com shoppers to call and email the e-commerce giant.”

At the time of writing, the membership of the Facebook page has almost doubled. Unsurprisingly, the CEO of Backcountry.com, Jonathan Nielsen, is scrambling to contain the damage and repair the standing of the brand. Among other measures, this has included an open letter to Backcountry.com's consumer base, in which he acknowledges that mistakes were made in the company's approach to trademark enforcement, and resolves to reexamine its *"broader approach to trademarks to ensure that we are treating others in a way that is consistent with the culture and values envisioned by our founders and embraced by our community"*.

Your approach to trademark enforcement should reflect your brand

Backcountry.com's misfortunes brings into sharp relief the fact that IP management and enforcement does not take place in a vacuum, but rather is embedded within the larger scheme of brand management. If your IP strategy makes you look like the boogeyman, your consumers will take note and, given the amazing power of social media to mobilise people and amplify their voices, your business may very quickly find itself in a situation beyond its control.

Of course, an IP strategy that enforces your rights effectively is indispensable; indeed, anything else is not worth considering. However, your approach to enforcement must also be aligned with your brand and the brand attributes that you are seeking to convey. Your chosen style of enforcement – when to be firm, when to be tolerant, which battles to pick – must be in keeping with your overall brand identity. In other words, how you enforce must reflect who you are; or, in enforcement matters, as Francis Bacon put it: *"The ripeness, or unripeness of the occasion [...] must ever be well weighed."*

For advice on how to design a trademark enforcement strategy that reflects your brand and IP portfolio, please contact:



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After earning her Master's Degree in Law at the University of Geneva, Anca Draganescu worked for several years in communications and branding in the business, cultural, and not-for-profit sectors. She most recently served as the Director of Communications at a global organization, where she was in charge of internal and external corporate communications. She thus brings broad and deep knowledge of different corporate settings, which informs her legal advice.

Before joining Novagraaf Switzerland SA, Anca worked as a consultant for the WIPO and as an IP counsel at different firms in Geneva, where her clients included both local small businesses and major global corporations. She specializes in trademarks, domain names, branding and visual identity creation, designs, and copyright.

Anca also holds a Master's Degree in Anthropology and the History of Religions from the University of Chicago. She is a member of the AROPI (Association Romande de Propriété Intellectuelle) and speaks French, English, Romanian (working knowledge of German and Italian).