

---

## Using Intellectual Property Law To Protect Your Brand On Social Media

*Flaster Greenberg Blog*

---

May 5, 2016

**Eric R. Clendening**

Social media has drastically changed the way consumers interact with brands. While the benefits far outweigh the negatives, there is still a laundry list of things that can go wrong for brands and companies of all sizes on social media. Its constant presence in our daily lives is the very reason why companies need to be vigilant in protecting their intellectual property online.

### **What are internet impersonators and why should I be concerned?**

There are individuals out there who create fake accounts on Facebook, Twitter, Instagram, and other social media sites. Some impersonators do it to profit off of a company's goodwill by using a company's trademarked logos and then baiting consumers to click on their carefully-placed advertisements. Readers may be misled into believing that this is a company's "official" social media page when it is not.

Many social media platforms, such as Facebook, Twitter, and Instagram, have an internal complaint process that is usually the quickest way to get a site taken down in cases of clear-cut impersonation. Such cases may involve:

- using a company's trademarked logo;
- using all or part of a company's name, or a misspelling of a company's name, in the username or profile;
- copying the fonts, colors, and overall design used by the company; and
- failing to include a disclaimer that the infringer is not affiliated with the company.

When those circumstances are present, Facebook, Twitter, and Instagram will usually respond to a takedown request submitted through their online complaint forms within 48 hours. Depending on the type and significance of the impersonation (e.g. a teenager posing as a celebrity vs. a company selling phony goods), attorneys may also want to craft an appropriate cease and desist letter.

### **How can I handle copyright infringement?**

Copyright infringement on social media and on sites like YouTube can be handled with a DMCA takedown notice. However, there are numerous prerequisites which must be met in order to be on solid legal ground to send a DMCA take down notice ([click here for a quick and easy DMCA takedown tutorial](#)). Other options include sending a cease and desist letter or reaching out to the infringer directly in order to explain the problematic content first.

*Continued*

---

The approach that we recommend depends on the nature of the infringement. For example, consider the difference between an aggressive cease-and-desist letter drafted on attorney letterhead to a teenager who posted a YouTube video of his favorite band's song, as opposed to a brief direct message requesting that the content be taken down. An attorney's conduct can be an extension of how the user sees your company and its brand. It is not only about removing infringing content, but also important to consider promoting a positive image of a brand in consumers' minds. Taking a measured approach in some cases can not only lead to faster results, but it can reflect positively on a company's brand as well.

### **How can I handle trademark infringement?**

A company should be vigilant in protecting its brand on social media because a failure to "police one's marks" can be used against a company in trademark proceedings and civil lawsuits with respect to strength of a mark. The importance of effective branding cannot be overemphasized in modern day marketing. Social media allows for potential consumers to see thousands of more words, images, and sounds in a single day than ever before. If a company wants you to see their product, they don't have to wait for you to come across it in a magazine or on a commercial during the 10 o'clock news – it is now seamlessly integrated through advertisements into Facebook, Twitter, Instagram, and every other social media platform. By the same token, infringers, if unchecked, can quickly change the way an average consumer thinks about a particular brand.

**Questions?** Let Eric know.

**Eric R. Clendening** is a member of Flaster Greenberg's Intellectual Property and Litigation Departments. He focuses his practice on intellectual property litigation and commercial litigation, including contract disputes, employment litigation, and other commercial disputes. He also advises clients on protecting and enforcing intellectual property rights online, including the resolution of domain name disputes and matters concerning e-commerce, online speech and conduct, and related intellectual property issues involving trademarks and copyrights.

### **ATTORNEYS MENTIONED**

Eric Clendening