

## Whats In a Beer Name? A Trademark Infringement

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It may have looked like a joke, but you can bet that behind the playfulness of a beer-pun laden cease-and-desist letter lie the very serious legal eyes of a large corporation protecting its brand.

Last week, California based restaurant chain In-N-Out Burger [sent the cease-and-desist letter](#) to San Francisco-based Seven Stills Brewery & Distillery, which had recently started selling a stout beer labeled "In-N-Stout Beer." The brewery posted the letter, which [contained nearly a dozen beer-themed puns](#), on its Instagram account and received national media attention.

In-N-Out's concerns definitely appeared valid. Not only is the name "In-N-Stout" a play on the In-N-Out Burger name, but the [mark on the Seven Stills stout](#) included a logo nearly identical to the one so famously associated with In-N-Out Burger:

The somewhat joking tone of the letter may have made the trademark issues and threat almost seem jocular or whimsical. That tone, however, belied the actual threat and the seriousness of the brewing trademark concerns.

In-N-Out Burger has a fanatical following and a famous brand. As the owner of several federal trademark registrations, it is imperative that In-N-Out Burger police its marks to identify confusing ones. In fact, it is prudent practice for any trademark owner to address any potential infringement of their marks, as use of any similar marks by others may dilute the strength of the owner's mark. A trademark owner neglecting to monitor potential infringement risks allowing an infringer to build up rights over a period of time. The passage of time makes it difficult to stop both known and unknown infringers. If a trademark owner becomes aware of actual infringement or a confusingly similar mark, but does not challenge use of those marks, the owner risks enabling the infringer to successfully raise an infringement defense if later threatened, potentially permitting continued use of the confusingly similar mark.

While there is no black letter law that imposes "duty" to police an owner's mark, it is common practice to monitor use of others to ensure that the public is not confused.

It should also be noted that Seven Stills no longer has "In-N-Stout" on its [current beer menu](#). So while the rest of the world laughed at the quirky beer name, the brewery knew the seriousness of ignoring a cease-and-desist letter from a billion-dollar corporation.

If you have any questions about policing your trademarks or whether your potential trademark infringes on another company's, contact [Joseph Falcon III](#), [Kevin Myhre](#) or anyone in the [Barley Snyder Intellectual Property Practice Group](#).

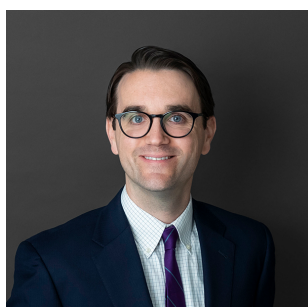


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