

Annie Allison in INTA Daily News: ‘Brand Afterlives’

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PRACTICES Intellectual Property, Trademark Prosecution, Trademark and Advertising, Trademark Cancellations and Oppositions, Social Media, Technology Transactions

Haynes Boone Intellectual Property (IP) Associate [Annie Allison](#) was quoted in an article in the *INTA* [International Trademark Association] *Daily News* titled “Brand Afterlives.” Read an excerpt below:

The birth of a new brand is usually accompanied by hopes and dreams of a long and successful market life.

But as many brand owners have discovered, the quest for the holy grail of eternal consumer appeal is fraught with unexpected turns that can trigger the demise of even the most powerful trade names.

The reality is that brands frequently die. A host of unpredictable factors, including commercial realities, shifting consumer sentiment, cultural sensitivities, and ill-gained notoriety can all prove fatal.

The past decade has seen the passing of many brands, including The Coca-Cola Company’s TAB diet soft drink, American online media company GAWKER, and iconic British High Street retail chain WOOLWORTHS.

Zombie Attack

For some brands, there are fates worse than death. If insufficient attention is paid to a valuable brand in its final throes, a third party will be well placed to cite the mark as abandoned or defunct and will seize it as a “zombie brand” at little cost.

In most jurisdictions, such parasitical parties can garner success if they present prima facie evidence that a mark has been “abandoned” due to years of non-consecutive use.

There is a key difference between zombie brands and those deemed dormant. According to Annie Allison, associate at Haynes Boone (US), “A dormant brand could be considered a brand or trademark that is not currently being used, but where the owner has plans for use and the mark has

been used recently enough to not be at risk of being deemed abandoned. Dormant brands are those that are at risk of being zombified.”

Brands are even more at risk if they evoke pleasant associations or tap into a marketplace for retro or vintage products, she added.

Brand Sustenance

So, when it comes to determining the fate of their brands, how can owners and guardians conjure the best solution?

“It’s critical for companies to remain aware of brand perceptions and consumer trends when it comes to thinking about the future of a brand and potential abandonment,” emphasized Ms. Allison.

Where there is a will, there is a way, and ultimately brand owners must perform a form of protective vigil over any vanishing brands if they want to revive or safeguard them in the future.

“Companies should remain focused on trademark prosecution and enforcement activities to maintain the overall health of the mark,” she suggested, “while also strategizing on potential legacy programs for keeping the brand safe from zombification.”

Excerpted from *INTA Daily News*. To read the full article, click [here](#).