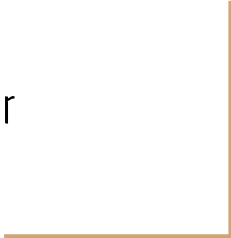




**Brand protection strategies on
social media:**

*How to best use social media
platform rules to drive a brand
protection strategy*

Jennifer Chung
VP, Counsel
Simon & Schuster
April 16, 2024



WHO ARE WE?

- ❖ Brand protection specialists, sophisticated trademark professionals, marketing or social media experts
- ❖ Aware of brand or content protection concepts, and applicable trademark frameworks
- ❖ Products, services, content that require protection and support
- ❖ Brand protection can be a part of competitive strategies
- ❖ Appreciate vibrant creative ecosystem for growth and opportunities
- ❖ Resource constraints, i.e. budget, time, people
- ❖ Acknowledge impacts of generative AI

Examples of Social Media Platforms

Social media platforms = online platforms or tools where people/organizations create, share, and exchange information and content with others (i.e. messages, photos, video, messages, shopping, networking).

- Facebook/Instagram/WhatsApp
- LinkedIn
- X/Twitter
- TikTok
- Google/YouTube
- Pinterest
- Snapchat
- Telegram
- Discord
- App Stores
- Yelp
- Glassdoor
- WeChat
- Reddit
- Quora
- Vimeo
- Twitch
- Tumblr
- Clubhouse

WHAT TO DO IF....

- Someone is using my trademark or copyrighted content
- Someone is impersonating my brand
- Someone is using MY username
 - Did you already register? Hacking?
 - Not yet registered? Impersonation?
 - Check the characters (0 for O, l for I; i.e. @people or @peop1e)
- Someone has the username I want
- Someone is using a misleading hashtag or using my brand as a hashtag

“IT DEPENDS”
- every lawyer ever

What does brand protection look like on social media?

- Use of trademarks or similar marks
- Similar username
- Similar look/feel to account
- Hashtags
- Impersonation
- Images/copyrights
- Publicity rights

Key characteristic on social media?

**Speed-to-action by platforms, identity of users,
transparency of impact, application of remedies**

Options as a brand owner?

PROACTIVE

- Maintain healthy trademark/domain name/username portfolio
- Preemptive registration of user names
- Routine training on good brand use
- Regular monitoring (use vendors?)
- Use influencers to control the message

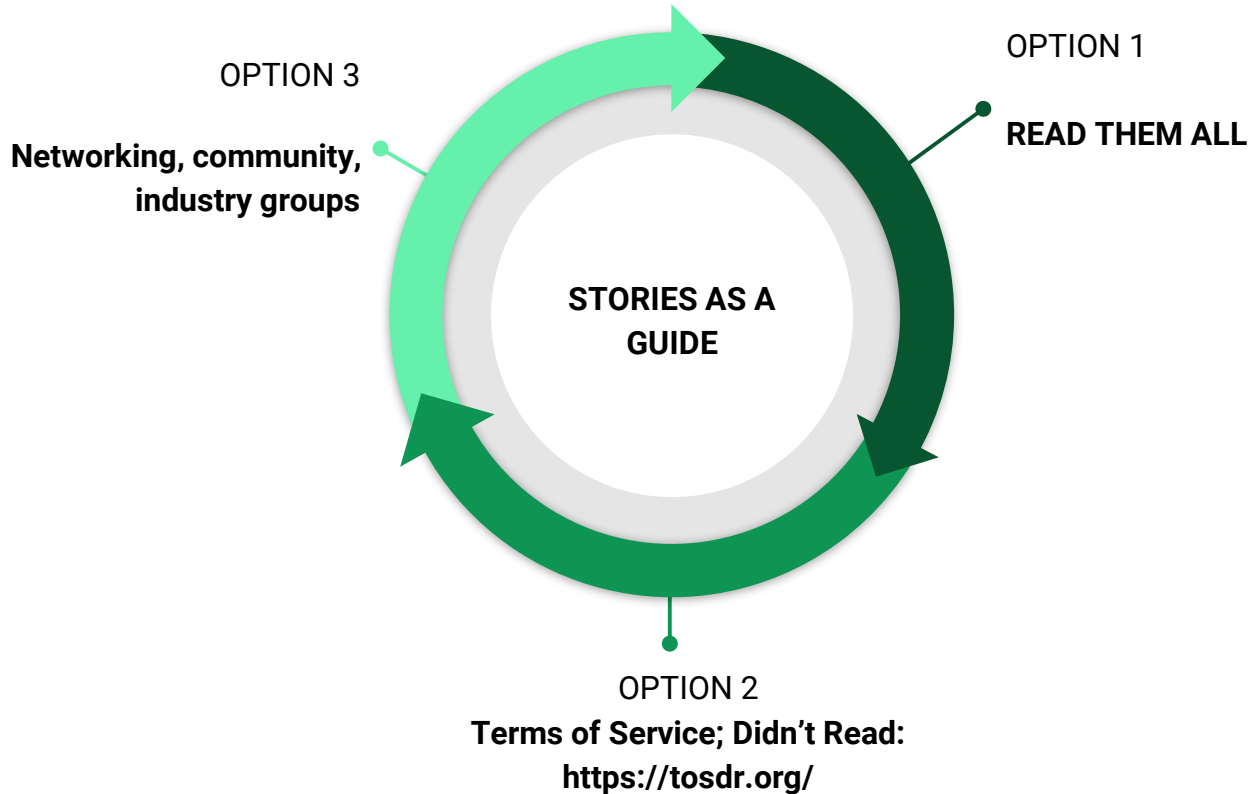
REACTIVE

- Direct outreach to user
- Social media platform terms of use/take down policies
- Direct contact with platform
- Adversarial actions/litigation
- Marketing opportunities
- Call out bad actors

Options as a content/product creator/influencer?

- Ask for forgiveness, not permission?
- Over-think clearance through process or guidelines
- Budget/Insurance
- Take licenses
- Ask for reps/warrants, indemnifications

So Many Terms of Service, So Little Time



All Hands on Deck



Coastal Living
June 14, 2015 · 🌐

Like Page ...

It's Day 2 of Summer Cocktail Madness, and today's battle pits a sailor's classic against a beachy icon. Which cocktail wins this round? Go online to vote, and grab a recipe to make your own!

ROUND 2



Summer Cocktail Madness: Dark 'N' Stormy vs. Daiquiri

In Day 2 of our Official Cocktail of Summer Madness, we've got Bermuda's iconic rum-and-ginger-beer cocktail against a classic Daiquiri (Our take combines grapefruit juice and maraschino liqueur fo...)

DAILYCATCH.COASTALLIVING.COM

516 11 Comments 70 Shares

Like Comment Share



DARK 'N STORMY®



INGREDIENTS

- 1 1/2 oz Gosling's Black Seal Rum
- Gosling's Stormy Ginger Beer

METHOD

In a tall glass filled with ice add 4 - 5 oz of Gosling's Stormy Ginger Beer and top with Gosling's Black Seal Rum. Garnish with a lime wedge (optional).

Gosling's Black Seal Rum's "Signature Drink."



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3	77323651	3461485	DARK 'N STORMY	TSDR	LIVE
4	74694951	2011630	DARK 'N STORMY	TSDR	LIVE
5	73705138	1657574	DARK 'N STORMY	TSDR	LIVE

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Dark 'n Stormy®

4.9 (1,000) 100% 100% 100% 100%



Ready in Time:
8 mins

Sand Time:
2 mins

Wk:
Week 2 cocktails

Ingredients: 4 cups (1L) Dark 'n Stormy®
1 cup (250 mL) ginger beer



The rich, low ABV (2.0) taste of this classic drink is made even more enjoyable with local honey bee products. From simple and healthy honeycomb, our mix and garnishes you will enjoy. Savor the honey and enjoy the sweetening in made with local honey.

Ingredients

- 4 cups (1L) Dark 'n Stormy®
- 1 cup (250 mL) ginger beer
- 1 lime (2 whole pieces) sliced, juice only
- 2 cups (500 mL) honeycomb

How to Make It

Fill 2 glasses with large ice cubes. Divide ginger beer evenly among glasses. Top evenly with simple syrup and lime juice. Gently pour 1.5L ounces (3.75 cups) of rum in each glass.

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Advertisement by: Waterman



Build-a-Meal

Find recipes with ingredients that you have on hand.

or

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Feed Me

The Top Christmas Candy to Party Now



My Take: What We Learned This Week - 11.27 to 12.3



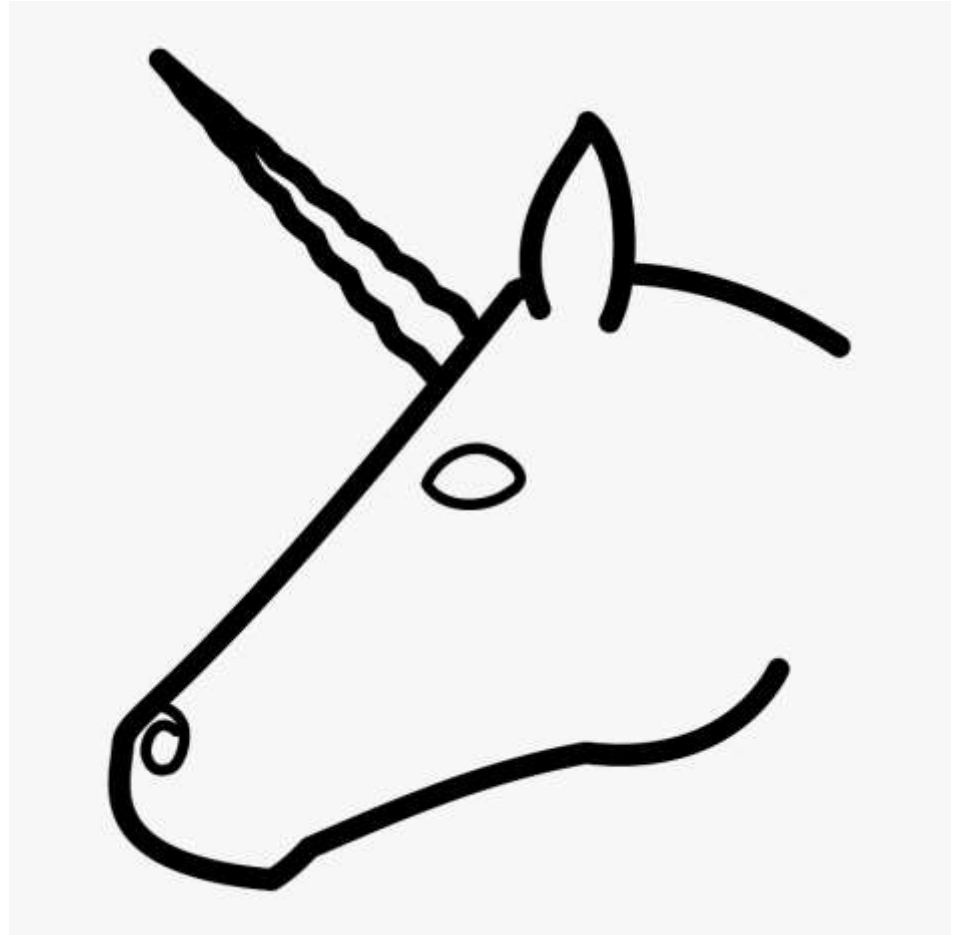
How to Make Your Eggs Even Better



Lessons Learned

- Take the efforts to achieve the end goal
 - Register trademarks
 - Create brand guidelines and stand by them
 - Pay attention to social media and online presence
- Cross training marketing, sales and brand protection (legal) teams
 - Where are the touch points for communication
- Networking works
 - Soft messaging
 - Provide space to learn
- Take downs are not always the answer
 - Ask for what makes sense
 - Teach what you want

What is a Unicorn



Inspiration on Instagram



Unicorn Latte



Unicorn Frappuccino

Lesson Learned

- Guidance from the USPTO as of 2017: “A mark comprising of or including the hash symbol (#) or the term 'hashtag' is registerable as a trademark of service only if it functions as an identifier of the source of the applicant's goods or services.”
- Teams will use social media for inspiration. It’s happening.
- Consider checking social media hashtags as part of clearance searches.
- Screenshot hashtag use for confusion - looks great in the Complaint.

Create a social media program:

PROACTIVE

1. **Claim Your Brand Name and IP:** Secure brand/company name or variations across all major social media platforms and register IP rights.
2. **Educate Employees + Guidelines:** Train employees on proper social media usage and internalizing the importance of protecting the brand's reputation.
3. **Engage with Influencers:** Ensure partners align with brand values and support online reputation; monitor content to ensure compliance.
4. **Stay Updated on Platform Policies:** Regularly review policies regarding brand protection, content usage, and reporting procedures.

REACTIVE

1. **Follow Mentions:** Monitor for mentions of brand, products, or key personnel to promptly address (measurable) negative feedback or potential brand misuse.
2. **Enforce IP:** Report copyright or trademark infringement.
3. **Leverage Platform Tools:** Take advantage of verification badges for official brand accounts; use available content moderation tools to automatically detect and remove inappropriate or harmful content related to brand.
4. **Encourage Reporting:** Use the platform functions or create a reporting link.
5. **Issue Cease and Desist Notices**

Final thoughts:

- Understand the social media platform policies or culture of use
 - Risk of overusing policies, social media or legal processes
- Generative AI, especially around images and voices, is part of the problem
 - Consider separate AI policy
- Include internal team in protocols for marketing clearance
 - For example, include routine registrations of relevant trademarks and social media username
- In Non-Disclosure Agreements with prospective licensees/vendors, include explicit restrictions on the use or registration or trademark/domain name/social media usernames
 - Explicitly call out social media usernames and account access information in M&A IP transactions



THANK YOU!

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