

## EXPERT ANALYSIS

### Q&A: Dykema's Eric Fingerhut Gives Trademark Holders Advice On Trump's Tweets

Intellectual property attorney Eric Fingerhut, leader of Dykema's trademark group, discusses President Donald Trump's tweets, how a brand can be affected by social media and what trademark counsel should do when a mark is engaged in politics.

**Thomson Reuters:** President Donald Trump's tweeting habits are no secret. What have you observed in his practice that should concern companies and other brand holders?

**Eric Fingerhut:** The only thing predictable about President Trump is that he is unpredictable. He tweets at all hours of the day and night. His tweets can be praising but more often than not if he mentions a brand in a tweet, it's not good news for the brand holder.

His tweets have affected stock prices, created backlash against brands from his base of supporters and have sent brand owners scrambling to manage crises. This is terribly concerning for brand owners because their hard-earned reputations are being placed in the hands and mind of a president who seemingly cares little about the negative effect of his words.

**TR:** How should trademark holders respond to a Twitter statement? Should it be "one and done" or more extensive, as if having a conversation?

**EF:** President Trump's tweets are broadcasts rather than back-and-forth dialog. If there were a back and forth, his tweets would be easier to manage. The answer would be to engage and have a conversation. In the current environment, my recommendation is to monitor and respond only if absolutely necessary.

Brand owners may be better off avoiding President Trump's tweets rather than engage and "make a mountain out of a molehill."

President Trump has a strong voice and ardent supporters. By engaging too much, brand owners will seriously risk alienating half their customers.

**TR:** Can you give some examples of trademarks with damaged reputations from Trump's tweets?

**EF:** There are countless examples of Global Fortune 50 companies that have all had to deal with reputation damage caused by a negative Trump tweet. In some cases, stock prices dipped and eventually recovered. In other cases, the brands tweeted in response to correct the record.

Wrigley, whose Skittles brand was thrust into the Syrian refugee debate, engaged compassionately with a simple statement that "Skittles are candy, not people."

Nordstrom's decision to drop Ivanka Trump's clothing line was called out by President Trump in a tweet.



Nordstrom stock also dropped but just as quickly recovered. We may be seeing a pattern.

**TR:** In what ways can companies protect their brands' reputation from Trump's "calling out"?

**EF:** Without a doubt, brand owners must monitor @realdonaldtrump on Twitter. There are other applications that can alert brand owners when Trump mentions them in a tweet. One such application is called "Trump Trigger."

Legal options are almost nonexistent given the fact that President Trump most often is engaging in free speech and opinion.

**TR:** How can trademark counsel ensure a brand holder is in the best position to prevent commercial misuse of a brand?

**EF:** In order to be in the best position to object to misuse when it is legally permissible to do so, trademark counsel must register their brands with the U.S. Patent and Trademark Office and in the trademark offices of every other country where the mark is being used. There are other steps trademark counsel can take.

First, make sure the brand's social media name and profile is reserved across the entire social media platform.

Don't stop at Facebook and Twitter, make sure the name and profile are reserved on all major social media sites (e.g., SnapChat, Google +, Instagram, etc.).

Finally, make sure the brand is registered in the most popular, top-level domain names (e.g., .com, .net and .org) as well as any new top-level domains that are germane to the brand's business.

For example, an automaker such as Kia likely would want the domain name kia.cars.

**TR:** What other political issues should concern trademark owners?

**EF:** Anytime a brand engages in political dialogue, it risks alienating half its customers. Therefore, brands typically proceed with caution. Boycott lists have been set up by those on the right and those on the left. The old adage "never talk about religion or politics" rings true for most brands.

On the other hand, there are brands such as Hobby Lobby and Chik-Fil-A on the right or Ben & Jerry's on the left who are so associated with a particular religious or political point of view that it might not matter.

I thought Anheuser Busch and 84 Lumber took big risks with its Super Bowl ads this year.

**TR:** Does Trump's tweeting practice surprise you? How could he use Twitter better?

**EF:** No comment.

**TR:** What advice would you give Trump in how to manage *his* brand?

**EF:** I don't think he needs my advice. He has an army of trademark lawyers at the ready. From what I understand, he has already had his lawyers file a new trademark application for his 2020 re-election slogan — "Keep America Great."



**Eric Fingerhut** is the leader of **Dykema's** trademark group based in Washington. He registers and enforces trademarks and focuses his practice on global brand identity and reputation management. His litigation experience includes infringement, dilution, cybersquatting and unfair-competition cases in U.S. district and appellate courts, oppositions and cancellations before the U.S. Trademark Trial and Appeal Board, and domain name arbitration proceedings.