

## *Debunking the “Duty to Police” in Trademark Law*

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The president of Monster Cable (an extremely frequent trademark enforcer), Noel Lee, has stated, “We have an obligation to protect our trademark; otherwise we’d lose it.” However, the Lanham Act doesn’t contain an express obligation to police trademarks (especially against expressive uses), and the conventional wisdom and related “lore” has caused countless problems.

This Article will examine the perception that brand owners have a duty to police their mark. Next, it will examine the supporting caselaw, focusing on the rare cases where judges have found a forfeiture. We’ll show that the “duty to police” is mostly mythical in court, especially in the infringement contexts, much like turning on the bedroom light reveals that no monster is hiding in the closet. We next question if trademark counsel deliberately overstate the “duty to police” for business development purposes. We conclude by recommending that practitioners reexamine their advice regarding the “duty to police” in trademark law.