

“Trademark Law as Corporate Law”

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This article explores the parallels that can be drawn between the tenets of corporate law and those of trademark law. When deciding whether to be aggressive in enforcing one’s trademark rights, to bring suit against a potential infringer, or even to enter into license agreements to allow third parties to use one’s trademark, the managers of a corporation are tasked with making a reasonable business judgment that is informed by trademark law. While such managers are routinely advised that failing to “police” third party infringement or actively monitor the quality of the goods or services offered by licensees will result in the forfeiture of trademark rights, courts rarely result to such extreme measures as declaring a trademark abandoned. Instead, the high burden of proof imposed on the party alleging abandonment, and the court’s reluctance to make such a finding, mirror the deference given to corporate decision-making under the business judgment rule. Highlighting the parallels between these areas of the law may help to remedy the uncertainty faced by trademark owners.