



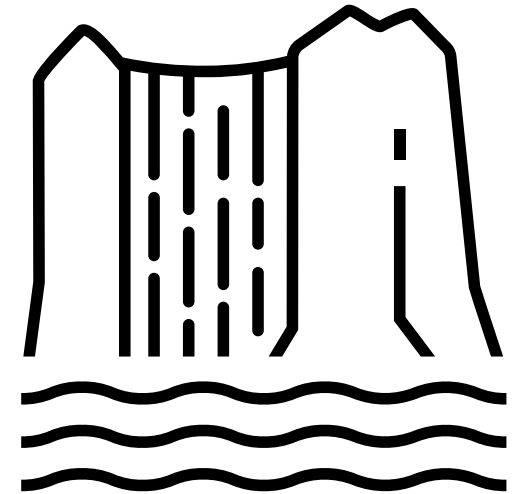
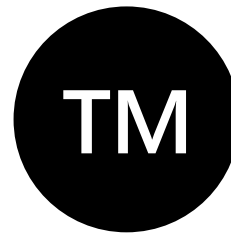
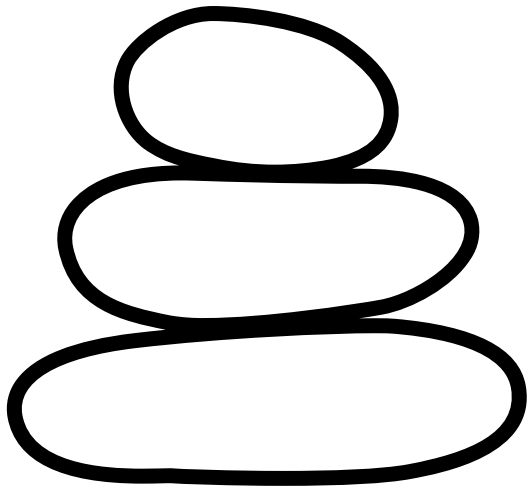
The Trademark Squeeze: Two trends to watch

Seth Hays

Chief Representative, Asia-Pacific

April 26, 2021

The Rock and Hard Place for TMs



Privacy Regulations and TMs Online

Trust is the Trojan Horse

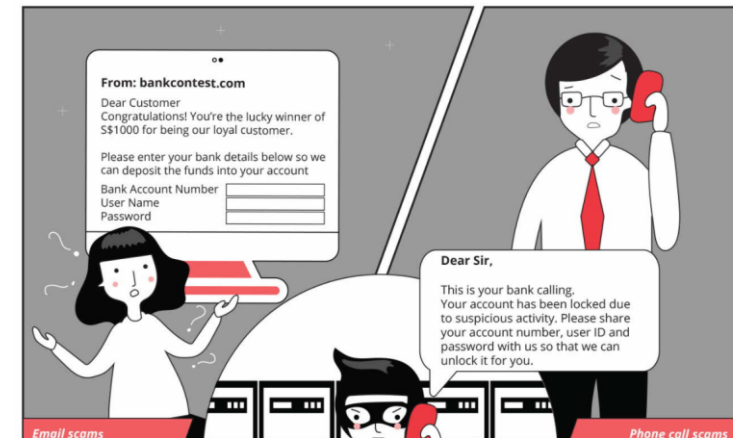
- Criminals use the trust in brands for:
- Phishing, Pharming, Scams, Malware, Botnets, Spam



Magnitude of Abusive Activities & Its Impact on Consumers

- Internet Based IP infringement is acknowledged as a worldwide problem with deep impact globally. It's important to recognize the continuum of harms when discussion definitions and solutions.
- The impact of counterfeiting is acknowledged by the EU *Report on the functioning of the Memorandum of Understanding on the Sale of Counterfeit Goods on the Internet* <https://ec.europa.eu/docsroom/documents/42701>
- A recent study by Interisle Consulting revealed that 684 different brands that were targeted by phishing including banks, social media companies, webmail, and games; national tax services; universities; and cryptocurrency exchanges. <http://www.interisle.net/PhishingLandscape2020.pdf>

Enjoy the convenience of shopping online while sidestepping **scams**. Just follow these useful tips.



Problems are Especially Acute in the Pharmaceutical Industry

- *A joint industry initiative led by the Pharmaceutical Security Institute (PSI) demonstrates that online service providers, including domain name registrars and registries, have cooperated less with the pharmaceutical industry over the last two years.*
- *Domain name registrars and registries rarely suspend the domain names of allegedly illicit pharmacies, when the pharmaceutical companies notify them of IP infringements.*
- *According to the European pharmaceutical industry, **fewer and fewer domain name registrars enforce policy against counterfeit medicines and historically prudent domain name registrars have become less reactive to notifications.***

Brand Restrictions

Food brand restriction, Chile

HUNNINGHAM February 9, 2018
sure i noticed 3 out of 4 were smoking and they can't



New York Times: Chile Slays Tony the Tiger, Feb, 2018.

Nestlé

CEREAL INTEGRAL
Garantizado



CONTIENE 330 g

Trix



¿CUÁNTO ES 100g ?

¿PORCIÓN SUGERIDA ES?

100g =

30g =

ALTO EN CALORÍAS

ALTO EN AZÚCARES

| | | | |
|------|-----|------|-----|
| 100g | 30g | 100g | 30g |
| 370 | 110 | 110 | 37 |
| 110 | 35 | 35 | 11 |
| 110 | 35 | 35 | 11 |
| 110 | 35 | 35 | 11 |
| 110 | 35 | 35 | 11 |

VITAMINAS Y MINERALES

Nestlé

CEREAL INTEGRAL
Garantizado



CONTIENE 330 g

Trix

Cereal para el desayuno a base de maíz integral y maíz con sabor frutal.

ALTO EN CALORÍAS

ALTO EN AZÚCARES

100g = PORCIÓN SUGERIDA

30g =

| | | | |
|------|-----|------|-----|
| 100g | 30g | 100g | 30g |
| 370 | 110 | 110 | 37 |
| 110 | 35 | 35 | 11 |
| 110 | 35 | 35 | 11 |
| 110 | 35 | 35 | 11 |
| 110 | 35 | 35 | 11 |



South Africa – Baby Foods/Formulas
No depictions of babies or children allowed

Before

and

After

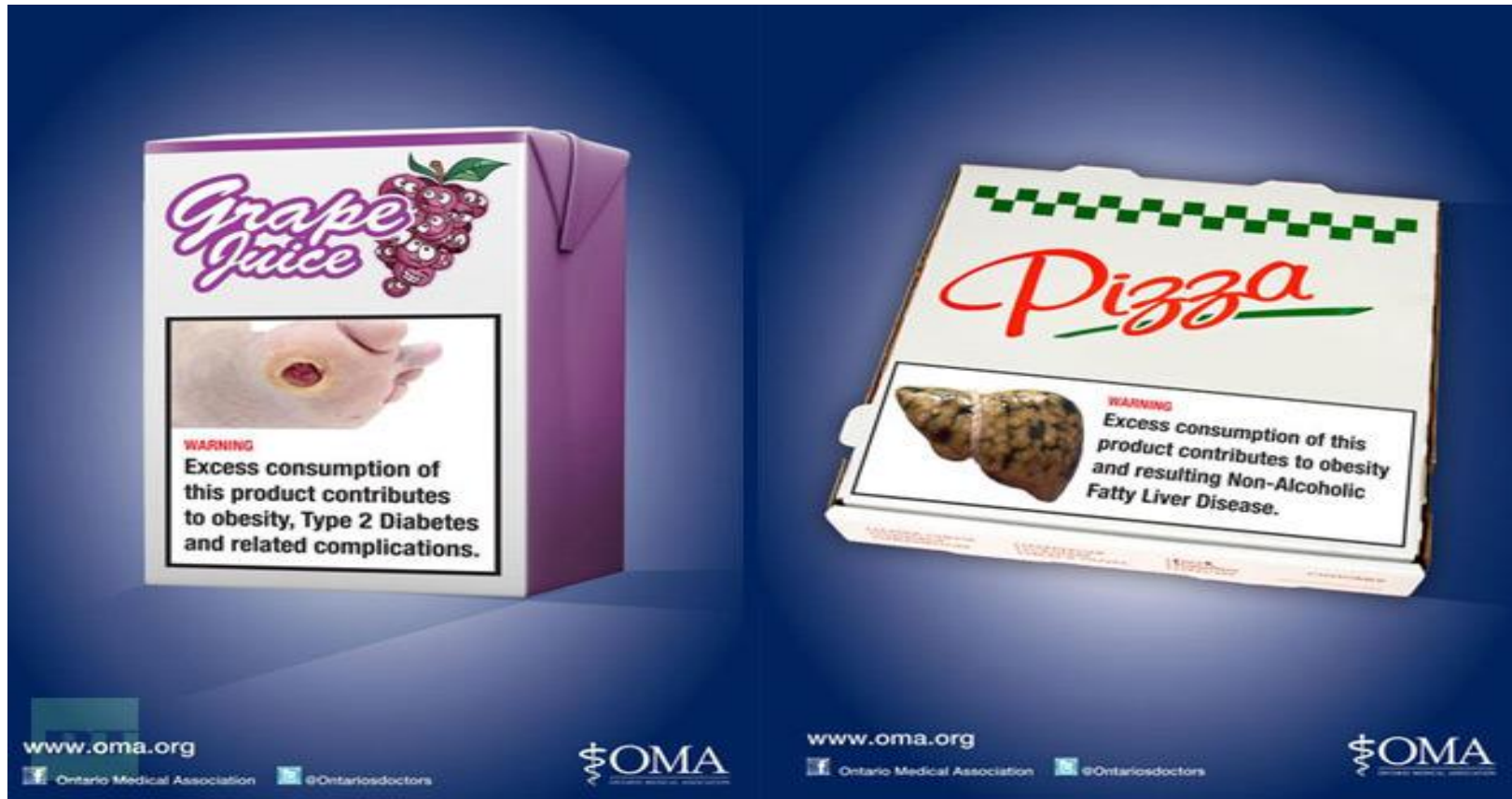


South Africa Food Labeling: Even Applies to Animal Babies



Proposals on the slippery slope

- Canada – Ontario Medical Association



Certain country to
restrict football/soccer
brands for public order





Recommendations

INTA Wish List for Fighting DNS Abuse

- Explicitly recognize online intellectual property infringement as a cybersecurity threat
- Mandate the publication of a single piece of registration data: a verified email address (proportionate under GDPR)
- Domain name industry collaborative efforts that include intellectual property interests on a consistent basis
- Meaningful voluntary practices to supplement contractual obligations

For more info on this issue, please contact Lori Schulman, Sr. Director of Internet Policy at lschulman@inta.org



INTA POSITION

Board Resolution 2015

BE IT RESOLVED, that it is the position of the International Trademark Association that:

- 1) Plain and highly standardized packaging measures being considered or imposed by governments should be rejected or repealed since they violate various international treaties and national laws on trademark protection including provisions of the Paris Convention (e.g., Articles 6*quiquies*, 7 and 10bis), the Technical Barriers to Trade Agreement (e.g., Article 2.2), and the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) (e.g. Articles 2, 8.1, 15.4, 17, 20 and 26), in particular Article 20 which states that “*the use of a trademark in the course of trade shall not be unjustifiably** encumbered by special requirements such as ... use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings;*” and
- 2) Governments should use less drastic alternatives to address health and safety goals, such as public educational campaigns which do not violate international and national law and expropriate valuable trademark rights.

**Note that evidence now suggests plain packaging can increase consumption by driving down price or removing psychological premium that brands give commodities:

“The effectiveness of plain packaging in discouraging tobacco consumption in Australia” <https://www.nature.com/articles/s41562-020-00940-6>

“Is plain food packaging plain wrong? Plain packaging increases unhealthy snack intake among males” <https://www.sciencedirect.com/science/article/abs/pii/S0950329315300239>





shays@inta.org