# Dilly, Dilly, Don’t Get Served for Infringing Trademark

By Lori Beam Before launching your new company or product, you should conduct a thorough trademark search and choose a name available for use. What you should not do is wing it and expect only the lighthearted enforcement Modist Brewery Company received from Anheuser-Busch InBev when the small Minneapolis brewery launched its Dilly Dilly Mosaic Double IPA before the Super Bowl. AB InBev sent a squire dressed in medieval garb to read a scroll gently advising the brewery to cease and desist – and then offered them two seats at the Super Bowl. Instead, in most cases lawyers rush to file a lawsuit against the marketer requiring substantial expense to defend. In evaluating a trademark’s availability for use and ensuring your chosen trademark is enforceable against use by others, a key issue often centers on each party’s ability to prove use of the mark in U.S. commerce. Proving trademark use may seem straightforward, but litigation and Trademark Trial and Appeal Board proceedings frequently involve a determination of whether a party’s use qualifies as sufficient to support trademark registration, common law rights, or trademark priority. For example, parties often dispute whether: • A use is sufficiently prominent to support trademark rights. • A use is made in interstate commerce. • Goods are sold or services are provided in actual trade under a mark. • Pre-sales publicity is sufficient to establish a party’s priority. • A senior user may stop a junior use in a geographically remote area. Avoid the “pit of misery” as the Anheuser-Busch In Bev cease-and-desist scroll describes it, ending with costly litigation to defend a lost cause. Hire a lawyer early on to do the due diligence and documentation trademark registration and enforcement requires. Dilly Dilly! Lori Beam chairs the firm’s Advertising, Marketing and Promotions practice group. Contact her at lbeam@sb-kc.com or 816-421-4460. *This article is general in nature and does not constitute legal advice. Readers with legal questions should consult with an attorney prior to making any legal decisions.