

# Premise liability and Intellectual property: a sampling of holiday legal woes

As we find ourselves in the midst of another [holiday season](#), it's a good time to contemplate the joys this time of year brings. For many, that list includes extra time with loved ones, hearty food, and cozy pajamas.



Hilary Hudson Clifton is a litigation attorney who represents individuals and both privately-held and public companies in a wide range of civil litigation matters. Click the photo to visit her attorney profile.

Hopefully, holiday-specific “legal woes” are less likely to come to mind. Nevertheless, holidays often have their own unique histories of legal issues that few would equate with the brotherly love and fa-la-la-falderal we expect during this “most wonderful time of the year.”

By this time, those who opened their homes and businesses on Halloween hopefully avoided any incidents associated with the spookier part of the season, like haunted house trip-and-falls or home-made cotton-ball sheep costume fires (see [Ferlito v. Johnson & Johnson Products, Inc.](#)).

**Premises liability**, however, remains a major concern for retailers preparing for the onslaught of holiday shoppers. Though most Black Friday retail giants are now well-acquainted with the safety risks associated with enormous sales and even bigger crowds, smaller retailers should be sure to beef up their safety protocol and brush up on premises liability concepts to keep the shopping season incident-free.

In addition to civil liability, failure to adequately cope with Black Friday madness can result in a business being cited by the **Occupational Safety and Health Administration**, whose “[Crowd Management Safety Guidelines for Retailers](#)” can be found online.

Less tangible injuries to **intellectual property rights** will often arise in connection with holiday-themed entertainment. One case that has been in the news recently involves the Netflix series *The Chilling Adventures of Sabrina* (which puts a darker twist on *Sabrina the Teenage Witch*), and [The Satanic Temple’s claim](#) that a statue featured in the show of the goat-headed Baphomet infringes on the Temple’s copyright of its own monument.

There’s also a fair chance that your favorite Christmas carol continues to generate income as someone’s intellectual property – and that someone would like to keep it that way

(think the listless bachelor played by Hugh Grant in *About A Boy*). Of course, many holiday favorites, like *Deck the Halls* and *Silent Night*, have become part of the public domain and are perfect for spreading Christmas cheer. Others, like *Frosty the Snowman*, are still protected by copyright and require a license for public performances.

Finally, if you have any particularly overzealous family members, you might turn the threat of intellectual property litigation to your advantage, by cautioning that their makeshift mistletoe hats infringe on the “[mistletoe supporting headband](#)” patented in 1983 or the “[Kiss Me](#)” holiday cap patented in 1999.

Though I wouldn't recommend Grinch-ing up your holiday parties by casually chatting about all the ways one might get sued before the new year, we should all keep in mind that no season is immune from the unfortunate reality of accidents, disagreements and liabilities – no matter how sincere our sentiments of peace on earth and goodwill toward man.

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