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WORLD OF INTELLECTUAL PROPERTY RIGHTS

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KNOW YOUR RIGHTS PROTECT YOUR RIGHTS ENFORCE YOUR RIGHTS

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Intellectual Property (IP) is an intangible property. It is something you, your mind has created. It can be a design, a logo, a name, a number, a business model, research, a novel, a story, an article, a music composition, lyrics, and so on...

Broadly IP can be classified into three different groups. Trademark, Copyrights and Patent. Over the course of these series of articles, we will delve into the different aspects of intellectual property. In this article, we will begin with an introduction to the concept of a Trademark.

What is a Trademark? A Trademark can be anything that helps business to distinguish its goods/products or services from other competitors from a consumer perspective. It can be a word, a phrase, a symbol, a design, a logo, sounds bites, or a color scheme. It can be registered when one is using in the business or when one intend to use the mark for his business. The roar of the MGM lion, the pink of the Owens-Corning insulation, and the shape of a Coca-Cola bottle are famous and recognizable trademarks.

Why Trademark? A Trademark has been, and being used, by almost all successful business in the history of trade and commerce, and can be used as one of the effective marketing and branding tools for your business too.

At the time of starting any new business, small or big, it is advisable to check the availability of name, design, color scheme, or logo of the business for Trademark for two reasons:

If you discover that your business's name, design, color scheme or logo is unique and is not being used in the commerce in the same trade or business, then you should consider registering it, as a trademark to identify your goods or services in the commerce and to put others on guard that no other business entity can use it for the similar business or services.

If you discover your business's name, design, color scheme or logo is similar or confusingly similar to some other trader in the same line of business then you must take legal assistance to determine whether use of such name would infringe somebody else's Trademark rights so as to avoid litigation which may be very costly.

Just like other physical property, a Trademark needs to be protected from unauthorized use as well. Registration of Trademark is not compulsory but registration gives better protection and ability to claim monetary damages upon infringement in the court of law.

The process of Trademark registration can get tricky. Some words, a phrase, or logo/design are not registered until they acquire distinctiveness, i.e. consumers relate the mark/name with product/services, while some of the marks are not permitted for registration for varied reasons like obscene, scandalous, offensive marks, etc. Therefore, one needs to be very cautious and should take legal assistance in this regard to understand more in detail.

Use of ® or TM or SM

An entity can use the notification of Trademark, symbol ® next to their trademark once that mark is approved and registered with Federal Register. Conversely, unregistered mark could use TM or SM symbols when they are either using the trademark and/or are in a process of registering it. One cannot use any sign of trademark notice if it is not actually using mark in the business.

Where to register Trademark?

A Trademark can be registered with State Register and/or with Federal Register. State registration protects your Trademark within the territory of respective States and federal registration protects your Trademark in all the States.

There are certain benefits of state registration over federal registration and vice versa. For example, State registration is faster and cheaper than federal registration; federal registration gives protection on national scale while state registration gives protection only within that state; the standard of enforcement of state registration is different from that of federal, etc. You should seek legal assistance to understand the different provisions of state registration and federal registration and for protection of one's mark.

One distinctive difference between State Registration and Federal Registration is filing of 'intent to use application' of the proposed mark. Federal Registration allows to file 'Intent to Use application' for trademark registration if the proposed Trademark is not actually in use but is likely to be used in near future, say within six months or so. In the US, priority of ownership of mark is based upon first to use and not upon first to file for registration. However, 'Intent to Use' application benefits to claim priority if no one was using the mark at the time of such application and in some instances foreign applications can also get benefits of such priority claim.

Once registered, a Trademark can be renewed and protected forever as far as it is in use in the trade/commerce.

If your business is global in nature then you might want to protect your Trademark worldwide, if so, then one needs to register their Trademark in different countries and comply with each country's law.

With that note, we conclude this article. In the next article, we will probe deeper into the topic of trademarks. However, before leaving we would like to leave you with a quote that impresses the importance of IP and IP protection in today's global world.

Recent court decisions show how patents can protect small businesses. The U.S. Supreme Court ruling forced the software giant Microsoft to pay \$290 million to i4i, a small Canadian tech company for a patent on XML editing technology that is alleged Microsoft used in its software package.

Heena N. Kampani, Esq.
 Registered to practice before US Patent & Trademark Office
heena@kampanilaw.com
 Law Office of Heena N, Kampani
 678-656-3033
www.kampanilaw.com

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Heena N. Kampani

Attorney & Counselor At Law



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