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Jan Darpan

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Coin your Trademark / Brand Name and Lead the Market:

Aug 24, 2011 12:15 PM

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 categories. 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 understand different types of Trademark.

A Trademarks helps to identify source of goods. Consumers differentiate the products/goods based on recognizable trademark / brand name. Business owner needs to be very thoughtful when considering a name for its products / goods. Any name, which becomes a business's trademark / brand name, needs to be strong in terms of infringement protection and in terms of its marketability.

Understand Different types of Trademark:

Trademarks are broadly classified in four groups. In the following sections we will understand it each type with the perspective of strength of each in the commerce.

Arbitrary or Fanciful Mark:

Arbitrary or fanciful mark is considered the strongest mark in terms of legal protection. An Arbitrary or fanciful mark is a mark that has no connection with the products. It is invented or coined for marketing and representing the business. As an example, let's consider trademark 'Apple' for a computer. The name 'Apple' has no connection with its product. Apple, name does not convey any meaning to its goods in the commerce and therefore is Arbitrary or Fanciful Mark and is a strongest mark. Another example is 'Kodak' that has no meaning to its product, and there are many more examples of such fanciful mark that are known to consumers. As mentioned earlier this type of a mark is strongest in terms of legal protection because in most cases there is very little confusion about the name of the product with the name of the competitor's product. A name is designed for a product and is distinct then the product and does not describe or suggest underlying product.

Suggestive Mark:

A suggestive mark is considered as a second strongest mark in terms of legal protection. As it expected, suggestive mark suggests or conveys meaning of the underlying products / goods. The animal Jaguar, is known for its speed and brand name Jaguar for car conveys speed for the car. It does not directly describe the product. It needs some imagination to connect the name with the product. This may invite some confusion with other competing products as opposed to the Arbitrary Mark due to dilution of distinctiveness and therefore this type of mark is considered the second strongest from a protection perspective.

Descriptive Mark:

Unlike Suggestive Mark, Descriptive Mark describes the characteristics of the mark and therefore is a weaker mark. This mark is not characteristically distinctive and therefore weak in terms of legal protection unless it acquires 'secondary meaning' to get legal strength. Secondary meaning means consumers start recognizing goods / products with particular Manufacturer. In the US, such marks are not approved for registration unless mark owner proves that mark has acquired 'secondary meaning'. As an example, consider the mark - 'Holiday Inn'. From a literal perspective it describes or can be interpreted as 'a place to stay during holidays' and by definition it is descriptive mark and not very strong. Yet consumers easily connotes Holiday Inn with particular motel chain thereby acquiring a secondary meaning and making the mark strong.

Generic Mark:

Generic marks are weakest mark and are not approved for registration. It has a poor legal protection. Generic Marks are those marks, which have common name and directly describes or defines products / goods. It does not distinguish the product from others. As an example consider the word, 'Car'. It is very generic term and hence you cannot use the word for businesses related to sale of cars.

Protection:

Now that we have considered different types of marks let us consider important topics of protection. 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.

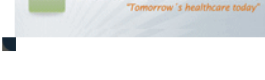
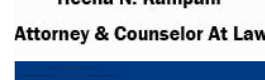
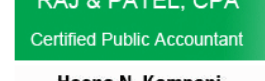
Once registered, a Trademark can be renewed and protected forever as far it is in use in the trade/commerce. If your business is global in nature then you might want to protect your Trademark worldwide, if so, then one needs to register their Trademark in different countries and comply with each country's 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.

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