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Register your trademark!

Introduction

Companies and newly incorporated firms tend to forget about registering their own trademark.

One of the main reasons is the common misconception that registering the company, or a tradename or domain name would be enough to prevent competitors from using the same name. Furthermore, many companies consider the registration as a cost that can be postponed – until something goes wrong. Just a few consider the trademark registration as an investment and a strong degree of protection it offers to companies' most valuable asset: their brand.

The advantages of registering your trademark

Firstly, registration is necessary to prevent someone else – most likely a competitor – from registering the same name and inhibiting you from using it. The business costs of having to remove your mark from your website, promotional material, stationery and packaging could be enormous. Moreover, using someone else's registered trademark would entitle the other party in issuing a claim for damages against you.

Secondly, if you don't register your trademark, it may be difficult for you to prove that you are the legitimate owner, and in any case, it is going to be extremely time-consuming. Trademark registration is the quickest way to obtain preliminary injunctions from the courts and recover damages later on.

Thirdly, registration is the only way to prevent your company from unconsciously infringing another company's rights. You may not realise that the mark you've been using is already registered. What could be the consequences? Having to rebrand, bearing the costs of new promotional materials, and being sued for trademark infringement by a competitor.

Finally, there are significant financial incentives to register your trademark. A trademark is an asset that has monetary value. It can be bought, sold or licensed and you can demand royalties for exploitation to your licensee, for instance, a distributor.

A trademark is one of the most important assets of your company: registration is the necessary investment to protect it.

What happens when someone else registers your trademark? Without a correct registration your only recourse is through a passing off legal action.

That is why it's imperative that you register your mark.

Top 5 reasons to register your mark

1. Exclusive rights

Exclusivity only comes through registration.

Only you are able to use your trademark in the territory in which it is registered (e.g. UK, EU, USA etc.). That means, should someone else try and cash in on your mark, you can sue them for trademark infringement.

It's important to remember though that your registration has to be renewed according to the applicable time frames of the jurisdiction of registration.

2. Don't rely on passing off

Further up, the legal action of passing off was mentioned. That is the only thing you have to fall back on if someone else used a trademark that you'd not registered.

It's a common law right and to be successful you must prove:

- You have goodwill/ reputation in the trademark
- The other party has made an actionable misrepresentation
- This has caused you damage

As a result, passing off can be difficult and costly to prove, as these actions are often beyond the budget of most companies. Which means, if you can't enforce it, you may have to give up your trademark, regardless of how long you've been using it.

3. Registered trademarks add value

You've probably heard the term *Intellectual Property*, well, that is what your registered trademark is, and therefore it has a value because you can:

- Sell it
- Licence it
- Franchise it

Over and above all of that, your trademark is your brand that attracts customers because it adds credibility to what you do.

4. Identify the origin of a product or service

Other than giving you legal protection (when registered), your trademark also prevents confusion in the marketplace. It tells your customers and clients who you are, and where to return to if they like your product or service. That's why it's such a valuable and important marketing tool; it sets you apart from your competitors.

5. Counterfeit goods

No one likes a copycat, and having a registered trademark helps to bring charges against counterfeiters if they are using your mark.

Registration of your trademark(s) has to be at the top of your list when starting in business.

Don't risk your reputation. To find out more about getting your trademark registered, or licence it, contact us.

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