

MARSHALL INSIGHTS

Five Reasons to Protect Your Brand.

The only sure way to protect your brand is to register it as a trade mark. Registration of it as a company, business or domain name WILL NOT protect your brand against use by others and will not prevent you from being sued for use of your brand. Below are five compelling reasons you should protect your brand by registering it as a trade mark.

1. YOUR BRAND IS UNIQUE

Almost everything else in a business is replaceable. Suppliers, employees, customers, plant, even proprietary technology, will all change over time, as will your business. The thing that is unique, and which if protected, will not change unless you re-brand, is the name and brand of your business. Nor do you want it to change. Changing the brand of your business causes loss of recognition in the marketplace leading to loss of sales.

Your brand over time will come to incorporate the values of your business and the quality of your products. An example would be BMW or Mercedes or Audi. All are recognised as brands of quality cars.

If you do not protect your brand from misuse by registering it as a trade mark, you may find yourself with an uphill struggle in court, trying to reclaim what you believed to be yours.

2. RIGHT TO USE

Once you register your brand as a trade mark, you cannot be sued by the holder of another registered trade mark so long as you confine your use of your trade mark to the goods and/or services for which it is registered.

3. RIGHT TO EXCLUDE

The primary function of a trade mark registration is to allow the owner of that trade mark to prevent others from using the same or similar trade mark on or in relation to the same or similar goods/services to those for which the trade mark is registered. That is, if a competitor uses a similar trade mark to the one you have registered for the same or similar products, you will have a right to sue for an injunction (a court order preventing further use by the competitor of your brand or a similar brand) and financial compensation.

IP *Peace of mind*

4. OWNERSHIP

As the owner of a registered trade mark for your brand, you have legal ownership of that brand and it is deemed to be an item of personal property, with all of the benefits that come with items recognised as personal property under the law. In particular, as an item of property, you can now sell the brand to a third party, by transferring ownership of it to the buyer. You can licence or permit others to use it, such as in a franchised business and earn royalties for use by third parties. If the brand is particularly valuable, you can also use it as security against finance.

5. RE-BRANDING

We have save the best until last.

If you do not protect your brand as a registered trade mark, you run the risk that somebody else will. This may put them in a position where they can prevent your continued use of your brand, or make it uneconomic for you to continue using your brand – due to the high cost of defending a court action for trade mark infringement.

The consequences of not being able to use your brand are significant.

You would incur costs dealing with the allegations of trade mark infringement, and settling the matter, which may include paying your legal costs, the other side's legal costs and perhaps some level of financial compensation to the other side.

You will then have to de-brand your business. De-branding your business may include removing the brand from your domain name, website, social media sites, business stationery, product packaging, vehicle signage, premises signage and marketing materials. Any TV or radio ads would be rendered unusable. The list goes on.

As if the cost of extracting yourself from the legal dispute and de-branding was not enough, now you have to come up with, develop and build a new brand which will involve re-branding all the items you have just de-branded - domain name, website, social media sites, business stationery, product packaging, vehicle signage, premises signage and marketing materials, TV and radio ads, to name a few.

As if this was not enough, there will be some level of loss of sales as customers are confused and concerned by your re-brand.

Contact us today to AVOID IP MISTAKES

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