

## TRADE MARKS

### (I) IMPORTANCE OF TRADE MARKS :

Even if you don't realize it, everyone deals with trademarks on a daily basis. "Trade mark" is another way of referring to "brands". Purchasers decisions are influenced by trademarks and the reputation such brands represents. Here are some of the reasons why trademarks are important to your business:

- (a) Trademarks make it easy for customers to find you and are an effective communication tool. The market place is so crowded and it's hard to distinguish your business from your competitors. Trademarks are an efficient commercial communication tool to capture customers' attention. Customers viewing a trademark immediately know who they are dealing with.
- (b) Trademarks can appreciate in value over time. The more your business reputation grows the more valuable your brand will be.
- (c) Trademarks are most valuable property asset. Similar to real estate, which can be sold, bought or licensed ie renting or lending.
- (d) Trademarks can inspire positive feelings in peoples' mind. If employees have positive feeling for the brand, products and services offered by the business, employees retention can be higher. Even employment opportunities are more attractive to candidates.
- (e) Trademarks will not expire as long as it is in use and renewed it from time to time.

(II) TYPES OF TRADE MARKS :

A Trademark is not only a symbol or a monogram or a logo as is generally understood, but also be a word, a device, a letter or letters, a numeral or numerals or combination of all these elements. The name or trading style of company, firm, association, corporation or any abbreviation thereof may also be a trademark, if represented in a special and particular manner.

Trademark is used or intended to be used in commerce to identify and distinguish the goods manufactured or sold by others and to indicate the source of the goods. In short, a trademark is a brand name.

A Service Mark is any word, name, symbol, device or any combination used or intended to be used in commerce to identify and distinguish the services of one provider from services provided by others and to indicate the source of the services.

A Certification Mark is any word, name, symbol, device or any combination used or intended to be used in commerce with the Owner's permission by someone other than its owner to certify regional or other geographical origin, material, mode of manufacture, quality, accuracy or other characteristics of someone's goods or services, or that the work or labour on the goods or services was performed by members of a union or other organization.

A Collective Mark is a trademark or service mark used or intended to be used, in the business by the members of a co-operative, an association or other collective group or organization, including a mark which indicates membership in a union, an association or other organization.

A Well Known Mark in relation to any goods or services means a mark which has become so to the substantial segment of the public which uses such goods or receives such services that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first mentioned goods or services. Eg: Nirma, Tata, Reliance etc.

(III) ADVANTAGES OF REGISTERING TRADE MARKS :

- (a) Exclusivity: Registration ensures legal exclusivity for the use of name, logo etc. Registration significantly reduces the risk of being prevented from using your name, logo etc by others.
- (b) Coverage: Registration gives nation – wide protection instead of rights that are restricted to the specific areas.
- (c) Prevention: Registration prevents other persons from using trademarks that are similar or identical to the registered mark in relation to same/similar goods and/or services.
- (d) Licensing : Registration make it safer to license the use of registered Trademarks to others.
- (e) Capturing the value: Registration increases the value of the product / services significantly to potential buyers ie more goodwill to the business and product.
- (f) Legal Rights : Registration makes legal action easier and quicker in case of infringement.

(IV) PROCEDURE FOR REGISTRATION:

Procedure for registration of trademarks involves following steps:

- (a) Selection of trademark
- (b) Search
- (c) Filing the application
- (d) Meeting the official objections
- (e) Acceptance of the Application
- (f) Advertising the application
- (g) Registration

(V) REFUSAL OF REGISTRATION :

The following trademarks may not be registered:

- (a) which is same, deceptively similar or identical to a trademark which already registered or has been applied for of a different proprietor in respect of same/similar goods.
- (b) which would be likely to deceive or cause confusion.
- (c) the use of which would be contrary to law in force.
- (d) which comprises or contains obscene matter or any matter likely to hurt the religious sentiments of any class or section of the citizens of India.
- (e) the name of Sect, Caste or Tribe in India.
- (f) the words standing for Geographical name or a personal name or a surname or any common abbreviation.

(VI) DURATION:

Trademark registration is valid for 10 years from the date of filing, if obtained. One has to apply for renewal in every 10 years.

(VII) GENERAL :

- (a) the ownership of registered trademark can be sold, assigned or transferred from one person to another.
- (b) registration entitled to institute any proceeding to prevent or to recover damages for the infringement along with passing off action.
- (c) without substantially affecting the identity of the mark, a proprietor of a registered trademark can alter the mark by applying to the registrar.
- (d) if a trademark is registered without limitation of colour, it shall be deemed to be registered for all colours.