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"Tip of the Month"

What's in a Name?

Due to the rising incidence of identity theft, there has been a surge in the number of corporations providing identity theft insurance. The idea of protecting an important identity is hardly a novel concept. In fact, the first law making it a crime to pass off another's identity as one's own was the "Factory, Manufacture and Workplace Act" in April 20, 1803. You might be saying to yourself, "Wait, that's not an identity-that's a trademark!" But the history of employing marks to identify sources of products is nearly as old as the history of mankind. Archeologists have found excavated artifacts left from Roman periods having "potters' marks" which were used to identify the maker (potter) of a particular vessel. Simply put, businesses and governments alike have learned through a long and painful history that your reputation, and thus, your mark, is one of your most valuable business assets.

In view of this, take a look at three different types of 'identity', i.e., trade names, common law marks, and Registered Trademarks. A trade name is the official name under which a company does business. It is also known as a "doing business as" name, and can be an assumed name, or fictitious name. Business identity theft caused \$268 million in damage in 2016, which seems like a lot until you consider that three Trademark Cases resulted in \$1 billion and \$531 million in damage awards that same year.

The most common trademark mistake is thinking that a 'common law' or unregistered trademark is legally the same as a Registered Trademark granted by Federal statute. As with Registered Trademarks, a common law trademark utilizes graphics, images, words or symbols, or a combination of such, to signify the distinctiveness or source of a product or service. There are, however, no official documents associated with 'common law' trademarks. Thus, when an infringement occurs, an unregistered trademark owner sometimes simply cannot provide sufficient proof, and thus cannot succeed in suit to collect damages.

Unlike common law trademarks, Registered Trademarks bestow certain legal benefits upon the holder. These benefits include constructive notice to the public of the registrant's claim of ownership of the mark; a legal presumption of the registrant's ownership of the mark and the registrant's exclusive right to use the mark nationwide in connection with the goods or services listed in the registration; the ability to bring an action concerning the mark in federal court; the use of the U.S. registration as a basis to obtain registration in foreign countries; and the ability to file the U.S. registration with the U.S. Customs Service to prevent importation of infringing foreign goods. The best benefit is the power to enforce.

Additionally, New Hampshire's statutes provide for the recovery of attorney's fees as a matter of course and only to plaintiffs, and offers enhanced damages automatically upon a showing that the violation was willful or knowing. For Registered Trademark holders in New Hampshire then, the potential for recovery of attorney's fees and enhanced damages is increased, and the risks are reduced.

If you or someone you know would like to obtain a Federal trademark registration, call the attorneys at Mesmer & Deleault, PLLC today at 668-1971, or contact us by email at mailbox @ biz-patlaw.com.

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