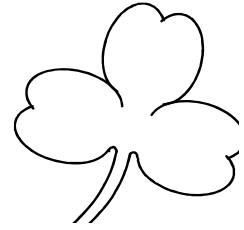




Happy St. Patrick's Day

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"Tip of the Month"

A Company's Trademark Can Be Its Most Valuable Asset

Most companies don't realize it, but the company name is also its trademark. A trademark identifies everything about the company organization such as employees, products, services, officers, successes, failures, public representatives, and more. A company may use words, designs, slogans, and symbols as trademarks (i.e. source identifier) to differentiate itself from competitors and gain a competitive advantage in the eyes of the consumer. Even sounds can be a source identifier such as the three distinctive tones that NBC uses for its entertainment services. Without a source identifier, the company's customers won't know who the company is, what it stands for, what it does, whom to buy from, and whom to contract with. Thus, a company's trademark is often its most valuable asset.

Trademark rights do not depend on registration in the US Trademark Office but arise when the mark is used in commerce. The company name, names of company products and services, any original marketing taglines, and logos can all be trademarks developed by the company and made enforceable against third parties, even if the company does not register the trademarks. Without registration, the company has common law rights.

Registration, however, has its benefits. Registration grants the owner nationwide use of the mark, infringement remedies under federal law, the right to use the R-in-a-circle ® symbol next to the mark, and the presumption that the mark is valid. Registration also allows the owner to register the mark with the US Customs Service for protection against counterfeit or gray-market goods being shipped into the country bearing the mark.

The strength of a trademark depends on the association of the words, designs or symbols with the goods and/or services being offered. The strength of a mark is in part a function of the mark's distinctiveness, and in part the extent to which the company has trained the public to associate the mark with the company. This training may involve specially-designed marketing campaigns with slogans, jingles and the like to connect the mark to the company in the mind of the consumer.

Once a mark is registered, the company has a duty to enforce its trademark rights against infringing third parties. Failure of the company to properly enforce a trademark can dilute the trademark's protectability and enforceability. Enforcement is a mix of cease and desist letters, takedown notices to social media sites, occasional lawsuits, and the use of watch services. The company can hire a professional trademark monitoring service, but sometimes the best watch services can be provided by the company's employees, customers and vendors who alert the company to infringing activity they see.

If you need help with your company's trademark(s) or would like to learn more about trademark registration and its benefits, the attorneys at Mesmer & Deleault are ready to help. Please give us a call at (603) 668-1917 or contact us by e-mail at mailbox@biz-patlaw.com to schedule an appointment.

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