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Fiber Logos are Valuable Assets Entitled to Legal Protection

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David A. Weinstein
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Here are important questions to ask about the word, design, and/or combination of them you use in connection with your fiber products. From now on I use *logo* for any or all of these things. What options are available to you if, after spending a great amount of time and money developing a product logo, you learn use of the logo cannot occur everywhere, or anywhere, the product is or will be offered? Why would someone else's use of a confusingly similar logo for the same or similar products create problems for you? Where should you look to find whether your use of the mark may or will present liability risks? When should you ask itself and answer these questions?

How you respond to these questions can have an impact on your product's success or lack of success. The right to use a logo free and clear of infringement claims by others and use by imitators is essential to success. Routine selection and use without regard to or recognition of favorable or unfavorable business and legal consequences may lead to a product's failure.

Logos, or trademarks as they are known in legal circles, can be among your principal intangible assets. Often they are the primary and, in some instances, the only readily available means the public relies upon to distinguish products containing or made of your fiber from products containing or made of from a different fiber.

EGYPTIAN COTTON owned by the Alexandria Cotton Exporters Association, WOOLMARK owned by Woolmark Americas, Inc, and ALPACA combined with a design owned by Asociacion Internacional de la Alpaca COTTON, are examples of logos that immediately bring to mind specific fibers. They are extremely valuable. The owners of these logos devote a significant amount of money, time, and effort to promote the fibers they identify with the objective of attracting and encouraging the public to purchase products containing or made of those fibers. Generally, the public relies upon such logos as assurance that the products they identify are of a uniform and consistent nature.

Fiber logos are subject to ownership under the area of law dealing with unfair competition, specifically trademark law. The legal rights associated with a logo allow the owner to exclusively

use it and prevent others from subsequently using the same or confusingly similar logo to identify identical or related products.

Selecting a logo

Because a logo usually becomes a valuable asset, you should give a great deal of thought to its selection. If you adopt and use a logo that is confusingly similar to a logo previously used and/or registered by someone else in the United States or elsewhere you may have problems. Your use might be challenged and if a challenge is successful, you will lose more than the right to use the logo. You may lose all the time, effort, and money you devoted to developing a desirable reputation for the product under the logo. Moreover, it is likely you will incur legal expenses to defend and/or settle an infringement claim.

Keeping these possibilities in mind, at the time you are thinking about selecting a logo and before your use, it is prudent to determine whether anyone uses and/or has registered a confusingly similar logo anywhere in the United States or elsewhere you offer or will offer the product. A confusingly similar logo is one used in connection with a product that is the same as or similar to the product under consideration and similar in sound, appearance, and/or meaning to the proposed logo, ignoring differences in spelling.

To learn whether there may be obstacles to registering your logo in a country, it can be worthwhile to have a trademark search conducted before filing and obtain an opinion about registrability. Generally, this is an approach to take that I recommend to my clients. If the search indicates it is unlikely you will be able to register your logo, you save the costs and fees applicable to filing if you decide not to file.

A trademark search can involve looking at government records as well as various publication and organization name listings and other name/logo information sources in every country where you want to use the logo. Avoid selecting and using any identical or closely similar logo that you know to be used by others for the same or related products.

How rights are acquired and where they can be enforced

In the United States the process of acquiring rights to a logo is not complicated assuming the logo is available. Proprietary rights are acquired by simply by using the logo on or in connection with products. Registration or the filing of documents with a governmental body is not required. However, these rights are not nationwide in scope at that time unless the logo is used throughout the country at the time of first use. These rights exist in each geographic area where the products the logo identifies are offered and promoted. They expand geographically as use of the logo expands geographically. Federal registration is an exception to this basis for acquiring rights and

is mentioned below.

As a consequence, the person who first uses a logo in a particular geographic area obtains the exclusive right to use it there for the products the logo identifies and typically has a basis to challenge a later user of a confusingly similar logo for the same or similar products regardless that the later user has been able to incorporate or qualify to do business under the name in that state/area.

The right to exclusively use a logo continues as long as the logo is continuously used to identify the products. Misuse of the logo or failure to stop others from using a confusingly similar logo could jeopardize the owner's rights.

Registration of a logo in the United States does not result in its protection in other countries. Similarly, registration in another country does not result in protection in the United States. Protection for a logo is on a country-by-country basis. Accordingly, it is unlikely you have rights in your logo in a country outside the United States unless you have registered it there, regardless that your products may be distributed in the country. If this is the case, it is possible for someone else to file to register the identical logo in that country before you file to register there and prevent you from using your logo on products you distribute in that country and prevent you from registering it there.

In some instances, it is possible to obtain protection in many countries by filing a single application. Doing this can give you widespread coverage. For example, you can file a European Community application with the objective of obtaining protection in the 25 member countries, rather than filing a separate application for each member country. This is a recommended approach because there are many advantages that arise from it including a sizeable cost savings in filing and attorney fees.

For countries that are not part of a trade union that provides for trademark protection throughout member countries by a single filing, it is necessary to register in each country where you want protection. For instance, is necessary to file separate applications in Japan, China, Korea, Malaysia, Indonesia, and Thailand if you want protection in each of these countries.

Ownership

In most instances in the United States, the actual user of a logo is the owner. In other countries, the registrant is usually the owner and user. An individual who creates the logo does not necessarily own it. Where a party other than the owner uses the logo with permission of the owner, such permission should be documented by means of a written license agreement.

Registration

In the United States, registration of a logo with the United States Patent and Trademark Office is not required to obtain rights and does not create rights. In other countries, the government agency responsible for trademarks handles registration.

Although registration in the United States is not required to gain rights, it is desirable because it gives certain benefits. Federal registration is handled by the United States Patent and Trademark Office in Washington, D.C. and offers significantly greater benefits than does a state registration of a logo. Federal registration is communicated to others through use of the encircled letter "R", ®, or the phrase "Registered U.S. Patent and Trademark Office" in association with the logo. This notice should not be used unless a logo is federally registered. The designation "Tm" is commonly used in association with a logo that has not been federally registered.

In most countries, the application filing date is very important. It can be the measuring date for when rights begin in a country, including the United States. Frequently it is referred to as the priority date. In the event of a conflict between two logos, the priority date can be a determinative factor regarding which logo is infringing.

Depending upon the country where registration is sought, it is possible to obtain a registration in as short a period as a few months after filing an application. In other cases, the registration process can take anywhere from one to two or more years to complete. However, despite the time involved, usually rights begin the date an application is filed.

Scope of rights

Not all words, names, phrases, designs or combinations of them are capable of functioning as protectible logos. The common or generic name by which a particular product is known is free for use by all businesses to accurately refer to their services or products. In addition, a word, name, etc. which describes the nature, function, quality or geographic origin of a particular product initially may not be protectible as a logo if there is no evidence to the effect that it is recognized by the relevant public as identifying and distinguishing a particular product rather than describing a characteristic of it.

Misspelling a descriptive word or name will not normally result in the creation of an otherwise unprotectible logo at the time it is first used. Even when a descriptive word or name does attain the status of a protectible logo, other businesses may continue to use it in a non-trademark sense to properly and correctly describe the product without violating the rights of the business that claims rights to it as a logo.

The protection available to a business with regard to a logo will vary depending upon the distinctiveness of the logo and the way it is used to identify the products. Generally, words, names, and the like that are laudatory or highly suggestive of an attribute of the product it is used to identify, or which are commonly used as elements of logos by others, have little distinctiveness and are considered to be weak logos entitled to a limited scope of protection. That is, such logos may be simultaneously used by unrelated businesses to identify closely similar products without any violation of rights as long as the logos differ in some way and the products can be distinguished.

Words and names that do not communicate any characteristics about the products would be viewed as strong logos entitled to a broad scope of protection. Such logos may be in the form of coined words (KODAK) or arbitrary in the sense that the known meaning for the word is not applicable to the product (i.e. CAMEL for cigarettes).

This type of logo may require more input, from an advertising standpoint, to establish customer recognition for the product at the outset because there is no readily perceivable association between the logo and the product. In spite of this factor, it is highly desirable that a business utilize this type of logo because of the greater degree of protection available.

Infringement

Where the logo of a particular fiber producer is used to identify competitive or related products by an unauthorized user of the logo it is in the interest of the logo owner to challenge such use with a view towards stopping it where circumstances merit such activity. Unauthorized logo users will undoubtedly adversely effect the business of the logo owner in a number of ways and possibly jeopardize the owner's rights in the logo. The sale of products will be lost by virtue of consumers purchasing the infringer's products, relying upon the appearance of the logo in connection with them, in the belief that they come from, are sponsored by or are in some way connected with the owner of the logo.

It is unnecessary to prove that members of the relevant public are actually confused by an infringer's use of a logo. The law only requires a showing of likelihood of confusion. The result of a successful showing of confusion, before a court, may be an injunction prohibiting the infringer from continuing use of the confusingly similar logo and, possibly a money award to the challenging party.

Conclusion

There are many other aspects of using and protecting logos that are relevant but which are not mentioned in this article. It is not necessary to know about or fully understand them to recognize

that logos can and should be protected.

More: [David Weinstein's bio](#)

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