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Series on Intellectual Property Issues: Part 14

Why should I protect my trademark?

While most businesses realize the importance of using trademarks to differentiate their products from those of their competitors, not all realize the importance of protecting them by registration. Given the importance that a trademark may have in determining the success of a product in the marketplace, it is essential to ensure that it has adequate protection.

You can protect your trademark by registering it. Registering a trademark gives your company the exclusive right to the use of the trademark. This prevents others from marketing identical or similar products under the same mark or under a confusingly similar mark. You may license or franchise your protected trademark to other companies, thus providing an additional source of revenue for your company. On occasions, a protected trademark with a given reputation among consumers may also be used to obtain funding from financing institutions, such as banks or venture capitalists, which are increasingly aware of the importance of brands for business success.

If you do not protect your trademark, other companies could (intentionally or unintentionally) use the same or a confusingly similar sign for their own products. Your competitors might adopt a similar or identical trademark and benefit from the reputation and relationship you have built with your customers and business partners. Use of your trademark by other companies can confuse your customers, and may also damage the reputation and image of your company, particularly if the rival product is of inferior quality.

Reference:

Making a Mark: An Introduction to Trademarks for Small and Medium-sized Enterprises. WIPO. Web page at <http://www.wipo.int/freepublications/en/index.jsp?cat=sme>. Provides some business reasons for protection of trademarks.

IPR-Helpdesk. Website at <http://www.ipr-helpdesk.org>. Basic information and guides for download and numerous links to other portals on IP. Includes guide on trademarks, under the link *Distinctive Signs*, and covers why trademarks should be protected.

Thus, trademark protection for your product:

- ❑ Ensures that consumers can distinguish between products;
- ❑ Enables companies to differentiate between their products;
- ❑ Gives you a marketing tool and the basis for building a brand image and reputation;
- ❑ Provides the opportunity for licensing and being a direct source of revenue through royalties;
- ❑ May be a critical component of franchising agreements;
- ❑ May be a valuable business asset;
- ❑ Encourages companies to invest in maintaining product quality in order not to deceive consumers.

In some countries (particularly countries that follow a 'common law' system, such as Australia, Canada, India, the United Kingdom and the United States) a trademark may also be protected through use. The main advantages of registration in such cases are:

- ❑ Registration provides proof of rights, which is particularly important in case of disputes with third parties.
- ❑ An application can be filed prior to using the mark, thus obtaining exclusive rights even before you have begun to commercialize your product.
- ❑ Registration makes it easier and cheaper to enforce your rights.
- ❑ The trademark is included on the register.
- ❑ The ® sign can be used next to the trademark.

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