Trademarks

According to the United States Patent and Trademark Office (USPTO), “A trademark is a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs, which identifies and distinguishes the source of the goods of one party from those of others.” Brand names, symbols, slogans, designs, words, smells, colors, or a combination of any of these that distinguishes a particular product or service from others of the same trade classify as trademarks. There are three types of trademarks, as defined by the USPTO:

1. Service mark: “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.” Some consider service marks to be separate from trademarks.

2. Collective mark: “A collective mark is a trademark or service mark used or intended to be used, in commerce, by the members of a cooperative, an association, or other collective group or organization, including a mark, which indicates membership in a union, an association, or other organization.”

3. Certification mark: “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 geographic origin, material, mode of manufacture, quality, accuracy, or other characteristics of someone’s goods or services, or that the work or labor on the goods or services was performed by members of a union or other organization.”

Trademark Eligibility and Benefits of Registering It

An individual or business unit intending to use a unique identifier to categorize its goods or services can register that identifier as a trademark. The trademark should be unique and not misleading. To own a trademark, the individual or business unit must file a trademark application form at the USPTO.

The application form must include the following to be accepted by the USPTO:

- Applicant’s name
- Applicant’s address for correspondence
- A depiction of the mark
- A list of the goods or services provided
- The application filing fee

Registering the trademark provides several benefits, including the following:

- Protection of an organization’s name and logo
- Exclusive rights of the mark and protection against trademark infringement
- More visibility of the product versus other products in the same trade
- Inclusion in the trademark search database, which helps to discourage other applicants from filing a similar kind of trademark
- The ability to, in the event of trademark infringement, ask the infringer to pay for damages and the attorneys’ fees that the plaintiff incurred while filing the lawsuit
- A base for filing the registration for that particular trademark in a foreign country

Service Mark and Trade Dress

There is a thin line of difference between a trademark and a service mark, so some consider them to be in the same category. A trademark differentiates products of the same trade, while a service mark differentiates services of the same trade. The symbol SM is for an unregistered service mark, and the symbol TM represents an unregistered trademark.

Trade dress is the distinctive packaging of a product that differentiates it from other products of the same trade. Color, pattern, shape, design, arrangement of letters and words, packaging style, and graphical presentation all constitute trade dress. Previously, trade dress referred to the way in which a product was packaged to be launched in a market, but now even the product design is an element of trade dress. Elements of trade dress do not affect the way in which the product is used. Federal law for trademark also applies to trade dress. There is no distinction between trade dress and trademark; the Lanham Act, also known as the Trademark Act of 1946, does not provide any distinction between the two.