Monitoring Trademark Infringements

Trademark infringement is a threat to any successful product or brand. It not only affects the direct revenue of the branded product, but it also defames the product by confusing the customer with products of inferior quality. It is necessary for the holder of a trademark to monitor infringements, following these guidelines:

- Check whether the infringement has been done by a distributor, employee, or customer.
- Check any third party who is involved in the infringement process.
- Ask for government authorities to identify a problem in third-party trademark application filings and domain name registrations.
- Stay up to date with news, articles, and consumers’ comments through which infringement can be prevented in its initial stages.
- Analyze infringement with the use of search engines.
- Make use of trademark infringement monitoring services such as CyberAlert and AdGooroo for detailed monitoring.

For example, say an organization trademarks a successful product called “WEED EATER” and another organization trademarks a different, inferior product called “weedeater.” A consumer may wish to buy a “WEED EATER,” but could end up with a “weedeater” by mistake, costing the original organization a sale and tarnishing its name with a product of lesser quality.

Key Considerations Before Investigating Trademark Infringements

Before investigating trademark infringements, an investigator must do the following:

- Check if the trademark owner has registered or applied for registration in the country where the infringement has occurred.
- Check if the country is a member of the Paris Convention or the Madrid Protocol.
- Check the laws addressing this kind of infringement.
- Look for availability of adequate and strong enforcement mechanisms.
- Check whether the trademark is in use in the relevant country or is vulnerable to cancellation.

Steps for Investigating Trademark Infringements

When investigating illegal trademark infringement, follow these steps:

1. Check the type of infringement.
2. Investigate the infringement.
   a. Check if the trademark owner has the necessary rights within the scope of the infringement.
   b. If the owner has prior rights, seek a settlement or pursue court proceedings.
   c. Obtain photographs and video footage outside the infringement location, i.e., property, area, buildings, signs, and so on.
   d. Obtain any available literature, brochures, business cards, and printouts from any sales software available.
   e. Document any promotional programs that are in use.
   f. Maintain a record of conversations with the business owner or employees.
   g. Do background research on the subject’s entity—local, county, state, and federal business registrations and licenses.
   h. Obtain video footage on location using hidden cameras.