

Moore: Viewpoint

Trade marks are for B2C, right?

Well, wrong, actually. Registered trade marks are a valuable tool for any business whether it normally sells to consumers or to other businesses.

First, some clarifications. A trade mark can be registered (which enables the user to use the ® symbol) or it can be unregistered (in which case, it may also be referred to as a trading style and is often denoted by the ™ symbol). Unregistered trade marks can be useful, but this briefing note is particularly concerned with the benefits of registered trade marks to a B2B business.

Legitimate barriers to competition

Businesses often work hard in order to carve out a market share, only to see others encroach upon it later. Registered trade marks can be useful in this situation. This might be as simple as preventing others imitating your products, but it may be much more subtle. Take, for example, an hypothetical business supplying locks to local authorities. Names which it might have thought of as product differentiators or stock identities e.g. the “Sentinel 9” are potentially useful registered trade marks. Whilst a competitor is unlikely to describe its products as “Sentinel 9” locks, the local authority may well start specifying the products in an invitation to tender (i.e. “Sentinel 9 locks”). If this is a registered trade mark, then any competitor supplying its own product would be infringing that trade mark, unless they make it clear that they are not supplying Sentinel 9s (in which case they would have to state this - which suppliers tend not to like doing) and they are likely to try to claim that their product was equivalent to a Sentinel 9 (which potentially brings more problems – see product comparisons below). Using this tactic we were able to work with a company supplying products as possibly unglamorous as compression couplings to put their competitors at a substantial disadvantage.

Piggybacking

Registered intellectual property rights which have an industrial application (e.g. patents and registered designs) have a finite lifetime. Registered trade marks can last indefinitely. Careful branding management can enable a business to piggyback a registered trade mark onto, for example, a patented product whilst the patent is in force. Once the patent expires, the registered trade mark may effectively take over in protecting the monopoly created by the now-expired patent. This may be obvious in a consumer facing trade, but it is often missed in the case of a B2B business.

Product comparisons

The vacuum cleaner wars, in which Dyson battled with the traditional vacuum cleaner suppliers, showed just how powerful registered trade marks are at controlling inaccurate product comparisons. When a competitor makes inaccurate comparative claims about their product versus yours, without a registered trade mark, you would have to resort to the law of malicious falsehood. As the name suggests, you would have to show that the competitor was motivated by malice. In practice, that is a very difficult thing to do. With a registered trade mark, Section 10 of the Trade Marks Act 1994 gives you a powerful weapon. Under Section 10, such comparisons must normally be justifiable on an objective basis. If they are not, then they potentially infringe the registered trade mark of the product being compared.



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Summary

As businesses face tougher competition (particularly from far-eastern suppliers), registered trade marks can prove to be a very cost-effective weapon in the continual battle to maintain market share.

Note: This is not legal advice and should not be relied upon, as being so. Always seek independent legal advice.