



Gudwill & Goodwill guide to Brand / Business identity



# The Gudwill & Goodwill Trademarking Guide

A comprehensive guide to protecting your Business Identity



## **What is trademark?**

*Definition-* Trademark can be a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs, that identifies and differentiates the source of the goods of one party from those of others. Some examples are Nike for sports apparel and Microsoft for software.

## **Why is it important?**

A trademark identifies the key aspects of a product or service in a specific way e.g. McDonald's big arched 'M' logo reminds you of burgers and fries and their quality of service. All the good feelings associated to MacDonal'd's have been linked to its logo, name and marketing messages. If someone else starts an eatery named McDonald's and does the promotions using the same logo, name or marketing messages then he manages to get people to mistake his eatery for the original McDonalds. This way he gets business while the original McDonalds loses out. This would affect the company sales and reputation. Also they lose out on their investment into building the brand and developing their clientele. The other person receives clients and goodwill without an equal invest or effort from his part. This prevented by registering the trademark as the owner of the trademark gains exclusive rights to the usage of the name.

## **What are the business assets I can protect?**

Trademarking for businesses include trademarking services for logos, slogans, business names, products names, marketing messages etc.

## **Mine is a service business can I trademark it?**

Under the new Trade Marks Act, 1999 registration of 'service mark' can be done. Such 'service mark' can be used as a trade mark but applied to services rather than goods i.e. Banking, Communication, Education, Financing, Insurance, Chit Funds, Real Estate, Transport, Storage material treatment, Processing, Supply of electrical or other energy, Boarding and Lodging, Entertainment, Amusement, Construction, Repair, Conveying of news or Information or Information and Advertising.



### **How do I get my trademark registered?**

- i. Registration of a trade mark may be done by filing an application in the prescribed form in FORM TM-1 along with the 10 additional representations (with the prescribed fee) in any one of the five offices of the Trade Marks Registry located at Mumbai (Head Office), Chennai, Delhi, Calcutta and Ahmedabad (Branches) depending on the jurisdiction where the applicant resides or carries on business.
- ii. Application number will be allotted to each and every application by Head Registry at Mumbai and this number shall not be mistaken as if the application is accepted or registered. After registration only, it will be called as Registered Number.

### **How soon can I get my trademark registered?**

Presently it comes to around 5 years on an average from date of application. Due to computerization of the Trade Marks Registry there are chances of obtaining it earlier too.

### **What are the different stages involved for obtaining registration of a trade mark?**

#### **a) Examination Stage**

Application will be examined by the examiner of trade Marks at Mumbai Registry. Examination report will be communicated to each Applicant or Agent or Attorney by quoting objections, if any, for acceptance of the application.

#### **b) Enquiry Stage:**

After receipt of Examination Report, a personal hearing may be requested by the applicant in order to overlook the objections by producing documentary evidences during the hearing. Thereafter order will be passed in the application by the registrar.

#### **c) Advertisement Stage :**

If the application is found to be acceptable, then it will be advertised in the Trade Mark Journal (official Gazette of the Trade Marks Registry) to invite opposition, if any, from the public within the prescribed period of three



months

**d) Opposition stage:(If any).**

This stage will arise only in cases when an opposition is filed against the registration of a particular trade mark .If there is no opposition, then the mark will be registered.

**How should I use the trade mark?**

Once the trademark is registered it can be affixed on the products and goods to be sold. It is necessary for the trademark to be used consistently.

**Patents**

Patent gives the exclusive ownership to the creator of an innovation containing new ideas and allows them to keep others from making commercial use of those ideas without explicit permission.

**Copyrights**

Copyright protects original works such as screenplays, fiction, writings, graphic arts, music/audio recordings, photography, software, video, cinema, and choreography and prevents people from copying or commercially exploiting them without the copyright owner's permission.

**How are trademarks different from copyrights and patents?**

Trademark protects distinctive words, phrases, logos, symbols, slogans, and any other devices that identifies your goods in the marketplace and gives you the exclusive rights to use them. It is related to business identity protection.

**How will I determine what to register as a trademark?**

In order to be eligible for trademark registration, a word or phrase has to be "distinctive" or unique enough to help customers recognize a particular



product in the marketplace. Generic terms that merely describe some feature or quality of the goods or that are based on someone's name or a geographic term are usually considered not eligible for trade marking. If you want to determine eligibility of your trademark, Gudwill & Goodwill can help you determine that instantly.

### **Do I need to be using my trademark in order to register it?**

No. But Prior user' of a trade mark is in a better position to availing rights rather than the registered owner of a mark. The rule of law is -" priority in adoption and use prevails over priority in registration". You must demonstrate the intent to use it. Once registered it has to be actively used to keep it in status.

### **Can an Internet domain name function as and be registered as a trademark?**

Yes. An Internet domain name can function as a trademark when it is being used to identify goods or services in the marketplace. For example, the Internet domain name [www.cricketbats.com](http://www.cricketbats.com) functions as a trademark when it is used as a website marketing a product, but does not function like a trademark when it only displays family photos of cricket fans and does not market or sell a product.

### **Once registered how can I protect the trademark?**

By registration trademark is already protected and it is much easier for the trademark owner to demonstrate its trademark rights and to enforce these rights through an infringement action. Unauthorized use of a registered trademark need not be intentional in order for infringement to occur. Unauthorized users can be asked to cease and desist from usage and legal support can be gained to prevent continued unauthorized usage.



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## How do I get started?

To get started you can contact us at:

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