

Example of research paper on trade marks problem question

[Business](#), [Company](#)



Trade Marks Question

Intellectual properties have proved to be of importance in our day to day activities, especially in the business environment. The law of various countries has done a lot to ensure that the law regarding intellectual property is not tampered with (Bently 2009). The concept of intellectual property is however not understood by many people. It is therefore good to know the definition of this term in order to understand this concept.

Intellectual properties are rights that are exclusively given to a person who owns assets that are intangible in nature. Examples of intellectual properties include trademarks, patents and copyrights. Trademarks are marks or signs that are used by trading organizations to distinguish the products and services offered by them.

Part A: Trade Mark Law

Consequences of applying to register a pyramid shape for chocolate mints, "pointy mints" as trademark.

There are certain consequences that may be realized by an application to register a pyramid shape for chocolate mints, "pointy mints" as a trademark.

We should note that the pyramid shape is similar in some ways to a well known brand of triangular chocolate "Toblerone." It is also notable that there are also other brands that have their chocolate products in pyramid shape. One of these is the brand Kolumbo, which is a Croatian product made by a company known as Kras. However, this company was engaged in the production of Toblerone, but under license (Bently 2009).

Trademark should be done in a way that consumers will not be confused

about the origin of the trademarked product or service (Bainbridge 2010). It is arguable that the consumers of Toblerone have had wide information regarding it since the product was trademarked in the year 1909. Since then, many consumers of this brand have familiarized with the shape of this product and also its origin. Applying for the application to register a pyramid shape for chocolate mints “pointy mints” would therefore cause confusion among the consumers of chocolate. Many consumers would think that “pointy mints” is one of the many brands of Kraft Foods. Kraft Foods is the owner of the Toblerone brand.

The reason for the confusion among the consumers of chocolate would be based on the shape of the pointy mints brand. It is therefore notable that the application would raise questions among the authorities involved in the registration process. According to the rules regarding the registration of trademarks, the product should not cause confusion among the consumers of the product in relation to the source of the product. This would therefore form as the grounds for the refusal of the application of registration. This is despite the fact that the two brands bear different names that make them distinct. The names differ but the shapes are the same.

Since the shapes of the two brands are similar, it is likely that the owner of Toblerone will file for an opposition barring the registration process. The opponents will only oppose the registration if they clearly show how the registration of pointy mints as a trademark will affect them in terms of business (Bainbridge 2010). However, if the registration of pointy mints as a trademark goes through, there would be more competition among the companies producing chocolate. Some of the customers would be attracted

by the pointy mints brand, thinking that it belongs to Kraft Foods. For those who are well informed of the newly trademarked product, they may find it more attractive than the Toblerone product. This will eventually make the Kraft Foods Company to improve its design in order to be more competitive in the production of chocolate. We therefore note that the consequences of applying for registering a pyramid shape for “ pointy mints” are both positive and negative.

Consequences of applying for the registration of a name, "Oxford", for bicycles

Oxford is an unregistered mark that has gained recognition all over the world for the production of bicycles that are of high quality. This brand has gained recognition for more than two decades. The unregistered trade mark of Oxford has been used to promote its products in many countries around the globe. The unregistered brand has also given it an advantage of gaining rights from the law of common rights. In the United Kingdom, the unregistered brands result from the law of passing off (Edwin 2003).

The application of oxford for bicycles would also cause confusion among the many buyers of bicycles around the world. The Oxford Bicycle Company is a company that has been well established in the United Kingdom. Many associated the bicycles bearing the name oxford with this company. More so, the products of these companies have been sold in many countries in the world. This means that the brand has been familiar among the many buyers of bicycles in the world. If another company applies for the application for registering its brand as oxford, people would think that the brand is owned by Oxford Bicycle Company (Edwin 2003).

The confusion regarding the owner of the brand named oxford would make the consumers to buy more of the product, thinking that it is produced by the famous Oxford Bicycle Company. This application would involve a close examination of the descriptions to view whether they differ with the known oxford brand. In other words, the application should involve clear specifications regarding the product to differentiate it from the earlier trademarked product. However, based on the procedures and rules regarding the registration of trademarks, the similarity of names may cause confusion among the consumers of the two brands. The only appropriate way of using similar names among two brands is by licensing one brand. Here, the owner of the earlier brand licenses the other company to use the name of the former in order to improve its business. The provision of license for the use of a name of a brand involves the payment of a certain fee (Lehman 1985).

If Oxford Bicycle Company is the one making the application, then its profits are likely to increase to a great extent. The brand is already known in most countries of the world. Therefore, its registration would protect it from other producers who produce goods that bear the name oxford. The company would have the exclusive right of using the name oxford on bicycles in all countries in the world. It would therefore be more competitive in the global market since it would be more recognized than its global competitors (Lehman 1985). If this company was the one making the application, the registration process would not be tough as compared to the registration by another company (Spector 1985).

If another company applied for the registration of the name oxford as a

trademark, it may be taken to court by the Oxford Bicycle Company on the basis that the former has infringed the rights of trademark. The reason for this is that the Oxford Bicycle Company has an unregistered trademark. The application of another company to register oxford as the name of bicycle would be infringing the conditions set out in section 5 of the trademark law.

Consequences of applying for the registration of the smell of " Desire" perfume.

The smell of " Desire" perfume has been described by experts as " Vanilla with a hint of spice." The application for the registration of this smell as a trademark would not have adverse effects. Firstly, there are no cases pending in court regarding the trademark of the smell of a perfume. This means that there is a low probability that the application for the registration of the trademark will be rejected. More so, the application does not represent any of the protected emblems of the United Kingdom. The law regarding trademarks specifies that the organizations applying for the registration of trademarks should take into consideration the emblems that have been protected by the government of the United Kingdom (Libling 1978). Failure to do this may lead to court action. In our case, the application has been made in accordance with this rule.

One of the grounds for the refusal or acceptance of an application is the registration of an unusual mark (Martin 2007). However, this depends on the nature of the smell being trademarked. It can be argued that the smell is not annoying to the noses of its consumers, meaning it is not dangerous at all. The application of the registration of this smell has therefore been made in good faith since it is meant to provide a sweet smell for the users of this

perfume. In addition to this, the application of this registration has not infringed the public policies that are related to the registration of a trademark. The principles of morality have also been used in this application since the product does not involve any malice.

The other positive consequence of this application is that it will face less tough registration processes. This is due to the fact that the product is distinguished from other products from other countries. Most notably, the smell is different from the smell produced by other oil products that have not been perfumed. If the application of this registration becomes successful, then unfair competition would be prevented, giving the owner of the trademarked smell competitive advantage over other potential rivals. Most importantly, the trademarked smell would help in distinguishing the products of the owner of the intellectual property and those of the other producers (Martin 2007).

The obvious negative consequence of this application is that it would cause confusion among consumers regarding the real smell of the product. Most of the people would view it as a vanilla smell. Others would view it as the smell of spices while others would view it as a combination of the two. However, the only advantage here is that vanilla and spices are food products while the “ Desire” product is an oil product. Therefore, based on the above arguments, there are no grounds for the refusal of the application of the registration of the smell as a trademark.

The consequence of applying for the registration of an unusual shade of metallic purple used as wrapping paper for mints produced by Rawntree Ltd.

The application of a shade of metallic purple used as wrapping paper for mints would provide an attractive view of the mints. This would increase the customer base for the company using this color. However, if the application of this color is registered as a trademark, the registration rules and procedures would be taken into consideration before accepting the application (Bently 2009). According to the registration rules, unusual marks and signs should be registered only if they are not immoral in nature. Therefore, accepting the application of the use of unusual shade of metallic purple used as wrapping paper for mints would be acting in accordance to the rules of trademark registration.

In evaluating the consequences that are likely to be realized from this application, it is good to evaluate the grounds for refusal that are absolute in nature. The evaluation of relative grounds is not necessary since the trademark does not relate to other previous trademarks. This leaves us with the argument that absolute grounds are the ones to be looked at in evaluating the consequences. If this application is accepted, Rawntree Limited would gain much due to reduction in unfavorable competition in the global environment.

Despite the fact that the trademark applied for is unusual, there is a low probability that the intellectual property will cause confusion among the various consumers of mint. Although there are some companies that use metallic purple color for wrapping mints, they have not registered them as a trademark (Bently 2009). Rawntree Limited therefore has an advantage since it will have exclusive rights in this application. More so, the goodwill as well as the reputation of this country is going to increase due to the fact that

the high quality of the product being produced is going to be maintained. If the application of this trademark is accepted, the customers will be able to differentiate the product of Rawntree Limited from those of other countries. The company would therefore have more recognition more than the other rival companies. The major consequence here is that the distortion of global competition would reduce to a great extent. The other impact would fall on the company directly in the form of sales and profitability. Based on past experience, most efficient companies which have trademarked their products have been earning super profits (Martin 2007). Therefore, it is likely that the sales of Rawntree Limited will increase if the application is accepted. This therefore means that the profitability of the company is going to increase.

Conclusion

Although trademarks are used to prevent unfavorable competition and to protect consumers, it should be noted that the registration of a trademark requires the payment of a certain amount of money. Therefore, companies should first analyze the cost incurred in the registration process in relation to the expected returns. A company should register for trademark if this action yields positive results. From the above points of view, we can conclude that it is important for a company to review the requirements of trademark application before applying for the registration of a trademark.

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