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RMC TRADEMARK & COPYRIGHT
BUSINESS BRIEF

RECENT SIXTH CIRCUIT OPINION SEPARATES DESIGN FROM WORK WITHIN COPYRIGHTS

In a recent Sixth Circuit opinion for Varsity Brands, Inc. v. Star Athletica, LLC, a different approach to copyrights was seen for the first time in the Sixth Circuit – design can be separated from the utilitarian aspects of a work. This is the first time that a court within the Sixth Circuit has adopted such a ruling in terms of separating the two within a copyright, although sister courts have adopted similar analyses.

One of the most interesting aspects of the opinion can be found on page 17 citing, "the Copyright Act protects the 'pictorial, graphic, or sculptural features' of a design of a useful article even if those features cannot be removed physically from the useful article, as long as they are conceptually separable from the utilitarian aspects of the article".

To read the full opinion, please visit:
http://www.michbar.org/file/opinions/us_appeals/2015/081915/60665.pdf

ELECTRONIC TRADEMARK ASSIGNMENT SYSTEM ENHANCEMENT

The USPTO recently announced that effective Saturday, March 5, 2016, the Electronic Trademark Assignment System (ETAS) will be updated to provide an entity-type drop down box for both the conveying party and receiving party, similar to the one currently used in the Trademark Electronic Application System (TEAS). This will allow a more streamlined

process for filing assignments of trademarks.

Because of ETAS limitations, the entity drop down list is limited to 99 entries; USPTO hopes to expand the list in the future. However, to capture the entity types that customers most frequently use, the drop down list includes all the domestic entity types found in TEAS plus the most common foreign entity types found within applications and assignments filed in FY2015. The entity types are arranged in the drop down list in this order: (1) the most frequently used domestic entity types; (2) the most frequently used foreign entity types; (3) the remaining domestic entity types in alphabetical order; and (4) the remaining foreign entity types in alphabetical order. There is a fill-in option for "Other" at the very end, if the desired entity type does not appear in the list.

United States Patent and Trademark Office Announces ID Manual Updates

The United States Patent and Trademark Office (USPTO) has announced that it will publish new and updated goods and services identifications and classifications in its ID Manual. The update will be effective January 1, 2016. Classifying goods and services in a trademark application utilizing the ID Manual reduces the chances that the USPTO will issue an office action seeking a clarification and/or amendment and may lead to a quicker acceptance and approval of a trademark application.

For businesses and individuals contemplating applying for a trademark application, it is worth considering whether it would be advisable to apply before the changes are applied or perhaps wait until after the changes are implemented.

The Difference Between Trademarks and Copyrights and Why It Is Important for Your Business

Many people are confused when it comes to trademarks and copyrights and what advantages and protections each may hold for a business. Copyrights and trademarks can be an important part of business marketing efforts and result in increased sales and profits for a business.

The United States Patent and Trademark Office ("USPTO") defines a trademark as "a word, phrase, symbol, and/or design that identifies and distinguishes the source of the goods of one party from those of others." The USPTO defines a service mark as "a word, phrase, symbol, and/or design that identifies and distinguishes the source of a service rather than goods." The simple difference between the two is that one is used with respect to goods; the other is used with respect to services. Traditionally, the term "trademark" refers to either a service mark or a trademark.

While a trademark does not have to be registered (whether with a state or with the USPTO) to be enforceable, registration has the benefit of notification to the public, a presumption of ownership (whether within a state or nationwide if registered with the USPTO) and potentially the exclusive right to use the mark with respect to the goods or services detailed in the trademark registration. This allows a business to prevent a competitor from siphoning off sales using a confusingly similar mark.

The USPTO defines a copyright as something that "protects works of authorship, such as writings, music, and works of art that have been tangibly expressed." A copyright owner has the exclusive right to reproduce the work, to prepare or license derivative works and to either display or perform the work publicly. A copyright protects the form of expression rather than the actual subject matter. For example, a copyright could protect a particular flyer describing business products from being copied but could not prevent others from writing a description of their own regarding the product. Copyrights are registered with the Copyright Office of the Library of Congress as opposed to trademarks which are registered with the USPTO.

For businesses, a copyright would be appropriate to protect art (i.e., an advertisement promoting the company), an advertising jingle, or print or media recordings that promote the business. In contrast, a trademark is used to protect specific words, phrases and logos that promote the business.

In some instances both trademark and copyright protection are advisable for a business, depending on the needs of the business and the types of materials are being used. It is recommended that a business undergo an analysis and consultation with an experienced trademark and copyright attorney if it feels it may need both trademark and copyright protection.