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Trademarks Are Dynamic: Is Your Portfolio Up to Date?

Brands are changing faster than ever, whether in response to COVID-19, advances in technology or generational shifts. Is your trademark portfolio keeping up?

Brand owners often assume that they own their trademarks based on their past registrations. However, a trademark registration must list the specific goods and services with which the mark is used.

Yesterday's trademark registrations may not cover current offerings, subjecting the user to a risk of infringement or making it more difficult to police their rights.

Scope of trademark protection may exceed goods/services listed in a registration.

Fortunately, even if a trademark registration does not list all current goods/services, a registered mark's scope of protection is not limited to only listed items but will also include goods or services with which use of the mark is likely to cause confusion. Said differently, protection generally extends to items which would reasonably be thought by the buying public to come from the same source, or thought to be affiliated with, connected with, or sponsored by, the trademark owner.

This protection is often referred to as the "related goods or services" rule. "Related" does not mean that there is necessarily any physical relationship between the goods or services identified by the conflicting marks. Rather, it means that the marks as used are "related" in the mind of the consuming public. As might be imagined, courtroom battles often hinge on whether goods or services are related. We have yet to know whether, for example, alcoholic beverages would be considered "related" to sanitizer.

Avoid conflict and take steps to make sure your trademark use for new goods/services is clear.

Brand owners should have their marks cleared for use with new goods or services to avoid such issues. Clearance searching should take into account similar marks and related goods and services that could give rise to a likelihood of confusion. It is quite possible that another party is already using a similar mark. For example, consider UNITED airlines and UNITED van lines; DELTA airlines, DELTA dental insurance and DELTA faucets; ACE hardware stores and ACE bandages; and TROPICANA Las Vegas hotel and TROPICANA orange juice. While the parties may have peacefully coexisted in the past, a product expansion can quickly change the dynamics.

Is a registration advisable?

Once cleared, it is important to consider whether filing a new trademark application is appropriate to cover the newly offered goods and services. While it may not be necessary to file an application covering brief use – for example, with hand sanitizer – a trademark registration may be desirable if the new offering will be longer-lived or have other importance.

In addition to new products/services, make sure all product/service expansions are reflected in your registration.

Similarly, it is a good practice to periodically review your trademark portfolio against your current offerings in order to fill any gaps. For guidance on how best to evaluate the strength of your existing trademarks, read our Trademarks team's article, ["Top Ten Reasons a Trademark Portfolio Health Checkup is Good for Business."](#)

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