

Protecting Your Brand: 3 Resolutions for the New Year

December 17, 2019

'Tis the season of making resolutions for the new year, and there are undoubtedly many goals you're considering to make 2020 a successful year. While you're making your list, and checking it twice, here are the top three things you can do to ensure that you protect and enhance the value of your trademarks and brands in the coming year.

1. Choose a strong trademark. If you're launching an updated logo, a new product or a new brand in 2020, be sure that you're selecting a strong trademark. The more distinctive the trademark, the more protectable and valuable it will be.

The most distinctive trademarks are those that are "fanciful" or arbitrary. Fanciful marks are "coined" or made-up terms, such as Adidas®, which is the combination of founder Adolf "Adi" Dassler's first and last names. Arbitrary marks have no relationship to the product itself, such as technology giant Apple®.

In the middle of the distinctiveness scale are suggestive trademarks, like Netflix® and Microsoft®, which indirectly allude to a quality or characteristic of the product. The least distinctive marks are "descriptive" trademarks like The Weather Channel®, Ford® and Best Buy®, which describe a characteristic of the goods or services, or consist of geographic terms and surnames. Finally, there are "generic" trademarks, which are never protectable because they refer to the actual goods themselves rather a particular product (think "restaurant" or the like). In certain cases, the marketing of products was so successful that previously fanciful or arbitrary marks, such as THERMOS® and ASPIRIN®, lost their distinctiveness and protection because the product name came to be used to describe an entire class of goods. This is commonly referred to as "genericide."

2. Use your trademark correctly. Differentiate your brand name from the surrounding text by using all capital letters or initial caps, bold, color or italic fonts, and use your product's generic name alongside the trademark, as in BAND-AID® brand bandages. Remember, a trademark is not a noun. It's an adjective. You don't drive a Jeep, you drive a Jeep® brand vehicle. Also:

- Never use a trademark as a verb. You're not Xeroxing. You're making copies on a Xerox® brand copier.
- The ™, SM or ® symbol should be used in all locations where it does not disrupt the reading of the materials but should be used in at least the first or most prominent mention of the mark on each page or section of the materials.
- And finally, always use the proper form and spelling of your trademark.

3. Police your brand. If you're not doing it, no one is. The USPTO will not police your trademarks. You can utilize simple Google® searches and Google® alerts to help you locate potential infringers. If you do find evidence of possible infringement, alert your attorney immediately. Your lawyer can take steps to stop the infringement, including sending cease and desist letters or, in the worst case, filing a lawsuit. The importance of taking action against potential infringers cannot be overstated: If you do not do it and you let others use your mark, you weaken your mark and risk cancellation or the ability to enforce it.