



Mesmer & Deleault, PLLC
41 Brook Street, Manchester, NH 03104
Seacoast Office: One New Hampshire Ave., Suite 125
Portsmouth, NH 03801



Independence Day

“Tip of the Month”

Zombie Trademarks – What are They?

There are many famous brand name products that are no longer made. They may have been famous in their day, and can still evoke nostalgic feelings when they are mentioned. If a trademark is not used for three years, it is abandoned and its registration cannot be renewed under the Trademark Act. This is true even if the owner intends to resume using it someday.

A trademark that is abandoned can be adopted by anyone else to use as their own. This makes sense, since the trademark register would otherwise be littered with countless unused words and phrases that no one else could use. When an abandoned trademark has the power to cause a consumer to continue to associate the product with its original owner years after abandonment, the trademark is said to have “residual goodwill.”

Some have made a business of identifying abandoned trademarks with residual goodwill and filing new trademark applications on those marks. The new owners hope to make the old products themselves or to sell the trademark at a handsome profit. Trademarks that have come back to life after being declared dead are called “zombie trademarks.”

Examples of trademarks that have become zombies, or might if revived, include F.W. WOOLWORTH, FISHER BODY, BURROUGHS COMPUTERS, BURGER CHEF, McCALLS, LOOK, TWA, ATARI, CONTINENTAL EDISON, ZENITH DATA SYSTEMS, MOLYNEUX, LA SALLE, COLECO, BRIM, UNDERALLS, MISTER DONUT, and ROMPER ROOM.

The value of these trademarks having residual goodwill exists in their ability to associate goods with their original owners. Does that mean that the new trademark owner is necessarily trying to deceive the public? Perhaps. The law on this matter is not well settled.

If you intend to adopt a dead but famous trademark from the past, consult with the attorneys of Mesmer & Deleault. We can help determine whether a trademark is truly abandoned and available for use.

If you have any questions about trademarks or other intellectual property, please give us a call at 668-1971, or contact us by email at mailbox @ biz-patlaw.com.

Frank B. Mesmer, Jr., Esq.
Robert R. Deleault, Esq.
Phillip E. Decker, Esq.
079

(603) 668-1971

Fax (603) 622-1445

E-mail: mailbox @ biz-patlaw.com

Visit our web site at: www.biz-patlaw.com