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## “Tip of the Month”

### Trademark Rights in Slogans

Slogans can be powerful marketing tools for a company’s goods and services. A few examples of registered trademarks are Coca-Cola’s “Refresh Together,” Under Armour’s “Protect This House,” and Greyhound’s “...and leave the driving to us.” However, not every slogan can be protected as a trademark.

To be eligible for federal trademark protection, a slogan must meet the requirements applicable to other trademarks. Particularly, a slogan must identify the source of goods or services and it must be sufficiently distinctive. If a slogan simply describes attributes of the goods or services, the slogan will be deemed “merely descriptive” and therefore lacking the requisite distinctiveness for trademark protection. These requirements also apply to state laws governing trademark rights.

Laudatory Terms. Phrases that attribute quality or excellence to goods or services may be rejected for being merely descriptive. For example, the USPTO (Patent and Trademark Office) refused registration of THE BEST BEER IN AMERICA because the phrase was highly laudatory and descriptive of beer, but not sufficiently distinctive to identify the source of the beer. Similarly, the USPTO refused registration of SUPER BUY as being merely descriptive for tobacco products. Laudatory slogans with terms such as “premier,” “best” and “ultimate” have raised similar problems with the registration of other marks.

Merely Informational. A slogan that merely provides information to the reader may also be fatal to registration. Examples of informational slogans include DRIVE SAFELY, THINK GREEN, and PROUDLY MADE IN USA. Rather than function as source indicators, these slogans were rejected for registration as being a common safety reminder, an environmental consciousness slogan, and a phrase that provides information, respectively. These slogans failed to identify the source of goods or services.

Acquired Distinctiveness. A descriptive mark may be registered on the USPTO’s Principal Register if it has been used for at least five years in interstate commerce. When a mark is used in association with goods or services for at least five years, it is presumed to be recognized by the consuming public as a source indicator, therefore having “acquired distinctiveness”. After five years of continuous use, it is presumed to be sufficiently distinctive for registration on the Principal Register.

A descriptive mark that has been used fewer than five years still may be registered on the Supplemental Register if the mark is capable of identifying the source of the goods or services. Supplemental Registrations share many of the rights as Principal Registrations, but Supplemental Registrations are weaker marks that lack the evidentiary presumptions of validity and distinctiveness.

If you have questions about rights in a slogan for your business, please call the attorneys at Mesmer & Deleault today at 668-1971, or contact us by email at [mailbox@biz-patlaw.com](mailto:mailbox@biz-patlaw.com).

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