EST. 1957
OLIVE & OLIVE
INTELLECTUAL PROPERTY LAW

Selection

The objective: you want a brand that users will be drawn to. One that's creative, unique and perfectly evokes your product or service. One that sells itself.

The solution: add Olive & Olive to your team.

We know branding. We've been doing it for more than half a century.

In 1957, our firm became the first trademark practice in what is known as the Research Triangle area of North Carolina. Since then, we've taken care of the intellectual property needs of thousands of clients large and small – from elite universities to kitchen table inventors.

We've learned a few things about trademarks and branding over the years.

The first step is choosing the right trademark. For most clients, we recommend that they avoid the first brands that come to mind. We encourage them to think a little deeper.

1: Descriptive marks are weak or unprotectable.

It's tempting to describe your product, but you can't claim the dictionary as your own, so it's difficult to create truly unique descriptive trademarks. And it's impossible to convert generic terms to your own exclusive use.

Example: if you're trying to come up with a trademark for a spaghetti sauce made from tomatoes, TOMATO SAUCE isn't going to work. Why? It's a "generic" term–the usual words that people use to describe this product. It would be difficult to talk about the product without calling it "tomato sauce." Thus the rule: generic words and phrases can't be protected as trademarks.

Here's an interesting factoid: words that start out as trademarks can become generic. "Cellophane," "aspirin" and "elevator" all began as trademarks, but their owners made the mistake of using the words as descriptors, and the public followed suit. Result: the words became accepted dictionary terms–no longer protectable.

So back to our tomato sauce dilemma. THICK RED might work, but only with enough support from advertising so that when people hear the phrase, they think of your product rather than the descriptive meaning of the term. Building that recognition is called "acquiring distinctiveness." Only after a term has "acquired distinctiveness" can it be protected, and even then, protection has significant limits.

Example: When folks hear the phrase "Ivory soap," almost everyone recognizes that's a brand–not a color–and it has become a fairly strong trademark. Even so, competitors can describe the color of their soap as "ivory."

2: Completely arbitrary trademarks are protectable - and they make strong brands.

Words that are either invented or used for entirely different purposes than their dictionary definition make strong trademarks. The problem is that such terms have no public recognition at all, so they don't help sales when first selected. It usually takes a significant promotion, with large outlays of time and/or money, to achieve brand recognition.

Example: XEROX is an arbitrary and very strong mark. It has no other meaning than its trademark significance. Thus, whenever it's used, it connotes the products and services of the Xerox Corporation.

Another example: GIRAFFE for tomato sauce would be an arbitrary mark. It has a meaning, but not one associated with tomato sauce. Other people might be able to use "giraffe" to describe their zoo animals, toys,

or games involving fake giraffes. But if you're the first person to adopt GIRAFFE as a tomato sauce brand, nobody else could use that word for that purpose.

3: Trademarks that are "suggestive" often provide the best real-world compromise.

Suggestive brands evoke a characteristic of a product or service–or the product or service itself–without "aptly describing" it. Consumers can easily understand why you chose the trademark and can remember it and associate it with your product or service. You won't need an exorbitant expenditure of advertising to create that association. Suggestive trademarks are protectable from the outset.

Example: DOWNY is a suggestive trademark, suggesting that clothes treated with this particular fabric softener will be "soft as down."

Example: NETFLIX is a suggestive trademark, suggesting movies ("flicks") provided over the Internet ("net").

Example: RAIN DANCE is a suggestive trademark, suggesting that rain will dance off automobiles and car windows treated with this protectant.

A final tip: avoid conflicts!

Even if you've chosen a wonderful trademark, you still can't use it if it conflicts with rights someone else already has established. Using someone else's brand is trademark infringement.

Ask Olive & Olive's attorneys about trademark searches to minimize the chance of conflict before you spend money on your big roll-out. If it's too late and you've already received a cease and desist letter, Olive & Olive's intellectual property litigation team can evaluate the situation, advise you on what to do, and defend you if necessary.

Got a question about whether your brand can be protected? Want expert guidance on selecting – and protecting – the perfect trademark? Call Olive & Olive today.