

Branding your passion

Understand what makes a strong, well-protected trademark

By Neil Juneja



Your brand is the most important aspect of your business. Your brand encompasses your name, logo, slogan and packaging. Without a strong brand, your customer will not

be able to associate your quality products from any other item on the shelf. Without a strong brand, cannabis becomes a commodity, no different than varieties of apples. Do you know which farm grew the last apple you ate?

DISTINCTIVENESS

Choose a brand that is distinctive. The brand should stick out in the mind of the public. A brand possessing a strong public image will not blend into the surrounding products. In addition, a stronger brand is more protectable against infringers. A weak brand is quickly forgotten.

When it comes to registering a brand as a trademark, there are five categories of strength. From weakest (not distinctive and garnering no protection) to strongest (inherently distinctive), they are: generic, merely descriptive, suggestive, arbitrary and fanciful. One should always aim for a brand in one of the three strongest categories.

Generic: A generic mark can never be registered and is never garnered any legal protection against infringers. A generic brand in this industry might be “recreational marijuana” or “legal weed.” There is nothing distinctive about generic marks.

Descriptive: Descriptive marks are those that simply describe the product. They lack inherent distinctiveness and are not protectable against infringement until consumers associate the brand with the product. This often takes years and considerable marketing investment. Examples of descriptive marks are “Seattle’s Super Weed,” “Green Buds,” or “Carl’s Chronic.”

In order to avoid creating generic or descriptive marks, avoid the most common terms used in the cannabis industry and culture. Some terms to generally avoid: kush, weed, canna-, mari-, sativa, indica,

THC, green, 420, etc. Not only will these words and prefixes not strengthen a mark, but there are many brands currently utilizing these terms.

Suggestive: A suggestive mark evokes some attribute or quality of the product in the mind of consumers. It requires an imaginative jump in the mind to understand what the mark is referring to. “Greyhound” is one example — a fast-running dog represents the (alleged) speed of the passenger buses. “Verdelux” is also a suggestive mark — it is a portmanteau created by blending “verde” (Spanish or Italian for green) and lux (a measure of light).

Arbitrary: An arbitrary mark has no relation to the products branded. For instance, an apple is a piece of fruit and bears no connection to the products of the computer company Apple. Sasquatch is also an arbitrary name for a glass company.

Fanciful: A fanciful name is one that is “coined” (made up) and has no inherent meaning. Fanciful marks are afforded the highest level of protection. In addition, a fanciful mark garners excellent search engine optimization (SEO) attributes. Kodak is a made up word and is therefore a perfect fanciful trademark. Zoot is also a fanciful trademark as zoot is not a word and has no meaning, apart from a zoot suit.

UNIQUENESS

Do not use a name that could be confused with that of a competitor. Do not ride upon another’s reputation. You may be sued for infringement. In addition, because your mark is similar to that of a competitor, you receive less legal protection.

It is also a good goal to avoid copying or parodying another brand, even if it originates in a completely different market. It may seem cute to name your peanut butter and chocolate edible “Reefers Peanut Butter Cup,” but I assure you, The Hershey Company will not be as amused. In fact, Hershey’s has filed numerous lawsuits

defending its trademarks against infringers in the medical marijuana industry. Develop your own brand and your products that will be easily identified by your customers.

THE FUTURE

Think about expansion. Keep an eye on what products you may expand to in the future. What regions might your brand be used in if you successfully build your empire? Forgetting to think ahead can be an expensive mistake to mitigate.

You may have to choose a new brand

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and incur the expense of marketing that new brand. “Seattle’s Best Bud” may not fare well against local competitors when you expand into Atlanta, Georgia 10 years from now.

CONSISTENCY

Aim for uniformity in your message. Use this on all products, in all advertising and at all times. Don’t dilute your message. Don’t confuse consumers. Get a domain name that is directly associated with the brand. Remember, all of your competitors are putting out a strong message. The goal is to provide a quality product that earns customer loyalty and increases demand.

With less than half of all marijuana licenses issued by the Washington State Liquor Control Board, the industry in Washington is already fiercely competitive. The best way to compete is through a quality product, brand loyalty and increased consumer demand for that product. A strong brand will become one’s biggest asset in this industry. Invest in your future. Invest in a solid brand.

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