

INTELLECTUAL PROPERTY

PROTECTED BY A TRADE-MARK

Because a company's identity constitutes its primary value, it is important to protect its trademark. This enables every company to access the many tools at its disposal for protecting itself.

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“Registering a trademark means creating a right”

Olivier Laidebeur (Office Freylinger)

EN Without a trademark, there are no rights”, explains Olivier Laidebeur, intellectual property consultant at Office Freylinger in Luxembourg. “The only current means of creating a right to a name or a sign is the obligatory registration of a trademark. For a company, whatever its size, this is something which is essential, because everyone has a name, so you must make sure to protect it”. Yet it is clear today that many companies are not yet aware of the importance of protecting their brand, the elements inherent in their identity, the names of their products or services. However, the risks of usurpation, infringement or quite simply theft of a company's identity are very real. “You can work under a name for 50 years, but if it is not registered, someone, at any time, may register a trademark under that name and forbid its use by anyone else in the future”, explains Olivier Laidebeur. When you have capitalised on a name for many years, when your company's reputation is linked to it, being purely and simply forbidden to use it may be disastrous. So you can understand the interest of protecting that which for many companies is most dear to them: their identity. If a trademark registration makes it possible to avoid any usurpation, it also means that others are prevented from positioning themselves as competitors in a given niche market. “Through a trademark registration you can protect your commercial territory. You can perfectly well use a trading name to keep competitors at bay. Furthermore, only intellectual property protection can currently establish a monopoly for a specific product or service”, continues the intellectual property expert.

The simple fact of using a trademark to protect a product, service or offer, allows a company to

have a palette of tools and possibilities of recourse which enable them to protect their business. “Registering a trademark means creating a right and thereby acquiring the means to have it respected, and be able to settle any problems you may have with others”, adds Olivier Laidebeur.

Possible recourse

Registering a trademark enables a company first and foremost to access an opposition procedure, which makes it possible to block the registration of a subsequent trademark, which had been operated under previously because that new trademark is related or similar. “In 80% to 90% of cases, the opposition procedure makes it possible to reach amicable agreements and better define each party's commercial territory, and everyone's rights”, continues Olivier Laidebeur. It is necessary however to keep a permanent look-out to be able to benefit from this recourse. “It's obviously essential, after having registered a trademark, to carry out surveillance, otherwise the trademark registration is as useless as a raincoat without a hood in the rain”, explains the Office Freylinger associate.

The trademark registration also opens the way to a series of recourse and legal actions,

such as the annulment of another trademark or even a ban on its use by a third party. “Generally speaking, in the event of misuse of a registered trademark by a third party, these operations make it possible to obtain damages. That ranges from effectively stopping its use, the seizure of goods, as well as closing the premises or publications in the specialist press, etc. The consequences, in terms of sanctions, may prove serious”, says Olivier Laidebeur. In addition to legal actions, the trademark holder may also benefit from customs surveillance linked to the trademark, matched by sanctions should any infringement from a foreign territory be discovered. At a time when the Internet has already acquired vital importance in the life of a company, the registration of a name can still enable the retrieval of domain names linked to the brand and used by third parties to its disadvantage (capturing traffic linked to the brand, sale of links, etc.). These recourses, as will be understood, constitute essential tools for any company that wants to control its image, but above all to protect it. Without forgetting that beyond the intrinsic value of a trademark, income can be generated around the intellectual property. In Luxembourg, this net income is 80% tax-exempt. Yet another reason to protect yourself properly. ✕