

United States of America

Q155

**Conflicts between trademarks and company and business names**

1. *As far as United States Law or case law is concerned:*
  - a) *Is there legislation, or other sources of law, to protect in the United States:*
    - i) *company names,*
    - ii) *business names.*

As established by the Lanham Act and confirmed repeatedly by judicial decisions, a trade name identifies the business of a producer of goods or services, while a trademark identifies the goods or services themselves. However, the general principles of protection applicable to trademarks apply to the protection of company names (also known as corporate names and may also include names of partnerships, etc.) and business names (also known as trade names) in the United States, when such names are used in the marketplace as trademarks or service marks.

As a practical matter, U.S. courts are rarely called upon to distinguish between trade names, trademarks and service marks and, because of the functional overlap between them, the same broad standards of protection apply to trademarks and trade names. Accordingly, conditions relevant to trademarks are also applicable to company and business names, i.e., the right to company and business names arises from priority of use and protection may be accorded to distinctive names, with exclusion of terms that are generic, descriptive, geographically descriptive and of personal names without secondary meaning.

Company or business names may be registered on a federal basis as a trademark/service mark if used as such, under the Lanham Act. Registration and protection for company or business names per se, arising from the incorporation or organization of a legal entity is not available on a national basis in the United States, as there is no federal system of registration or incorporation. Each state has enacted its own legislation to regulate the registration and use of company names, and a considerable number also employs specific rules relating to business names. The rights arising from such rules are different by nature than the scope and force of trademark protection. Registering a company or business name gives the right to use such name in business related matters, e.g. financial accounts, bills, invoices, but such registration by itself will not cover or protect activities under the name as a mark.

Federal protection for company names may exist under the Lanham Act's unfair competition provisions and dilution provisions, as well as under common law unfair competition principles and state dilution laws. It should be noted that a detailed analysis of the provisions of each of the fifty states is beyond the scope of this response. Therefore, answers will be provided on a general basis.

- b) *What proceedings are necessary for United States nationals to obtain the right to use a:*
  - i) *company name,*
  - ii) *business name.*

*and, in particular, is this conditional on the acceptance of the aforementioned name by a special Register (a Register of Companies, Businesses, etc.). If so, please explain for what reasons the company or business name might not be accepted.*

