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The Trademark Dilution Revision Act Of 2006 And Your Online Business

By Gemma E. Hoffman

Creating the right trademark that distinguishes your product or service from others is the key to a successful business both online and off. However, one recent legislative enactment is worthy of note, as it might influence your decision in choosing the next name or graphic for your online business.

Like its predecessor, the Federal Trademark Dilution Revision Act of 2006 ("Act"), signed into law in mid-October by President Bush, provides remedies for owners of "famous" trademarks (e.g. trademarks that are widely recognized by the general consuming public in the U.S. as a designation of source of goods or services of the trademark owner). Plaintiffs can file an action for dilution and obtain injunctive relief by showing their trademark has been "diluted" by the unauthorized use of another.

The Act provides for the cause of action known as "dilution." Dilution is a relatively new addition to trademark law that allows a plaintiff to recover from another's unauthorized use of his trademark where such use degraded or diminished the uniqueness and/or distinctiveness of his famous trademark.

Usually dilution is referenced together with the concepts of blurring and tarnishment. The revised Act specifically cites "dilution by blurring" and "dilution by tarnishment" as new causes of action in themselves. In all its forms lies the dangerous misperception that dilution claims require a showing of consumer confusion. Dilution claims, including blurring and tarnishment, require no showing or likelihood of confusion.

The revised Act is especially relevant to the online business owner in the initial stages of choosing a trademark name or graphic. Under the new cause of action for "dilution by blurring" you may run into problems simply by choosing a trademark that is similar to a famous trademark that causes the famous mark to lose its distinctiveness. Regardless if you adopted your trademark in good faith with no intention of piggy-backing off of the goodwill of a famous name brand, you may be sued for dilution by blurring. Similarly, under the new cause of action for "dilution by tarnishment" you may encounter problems by choosing a name similar to a famous brand if your use causes the famous trademark to suffer loss to its reputation.

It is particularly important to note that the new causes of action for dilution, dilution by blurring and dilution by tarnishment apply a "likelihood" of dilution rather than an actual dilution standard. This means that a plaintiff need only allege that your use is likely to cause or may potentially cause damage to their reputation or to the distinctiveness of their trademark. This new standard wields great power to owners of famous trademarks and could prove potentially lethal to the unsavvy online business owner or entrepreneur.

However, this new power is not absolute and will likely have little effect on comparative marketing and advertising both online and off. Under the revised Act, it is not actionable to compare your goods with that of a famous brand. It is also not actionable to parody a famous brand or trademarked product. For online marketers, this is important, as the Act preserved the traditional free-market idea of comparative advertising. Thankfully Congress recognized and appreciated the benefits of comparative advertising, maintaining its integrity in the revised Act.

>From the recent Google decision and this revised Act by Congress, one can glean that although the

strings are drawing tighter around the ever-expanding World Wide Web, it remains open to free-market competition and entrepreneurship. However, as trademark law evolves through judicial opinions and legislative enactments, it is always the best advice to consult an experienced intellectual property attorney before setting your branded product or service out into the world through the ether or otherwise.

This article was written by Gemma Hoffman, a graduate of Franklin pierce Law School. Gemma writes select pieces regarding intellectual property for the law firm of Goldstein and Clegg, LLC, a

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2006, Is It Your Year?

By Hifzur Rehman

Do you think 2006 is "YOUR" year or just "another" year in your life similar to the previous ones? What does 2006 mean to you?

What is your slogan for 2006?

2006 is My Year of Happiness

2006 is My Year of Success

2006 is My Year of Achievement

2006 is My Year of Marriage

2006 is My Year of Fitness

2006 is My Year of Spiritual Enhancement

2006 is My Year of Financial Independence

2006 is My Year of Getting Excellent Results in Exams
2006 is My Year of Learning a Foreign Language
2006 is My Year of Improving Writing Skills
2006 is My Year of Buying a House

The bells are ringing and we are just counting the days when 2006 will enter into our lives. Are you fully prepared to welcome 2006 and want to make it the most rewarding, fruitful and memorable year of your life?

What mistakes did you do last year? What went wrong with your agenda? What remedial actions do you want to take now?

Are you expecting some miracles to occur in 2006? Nothing positive will happen unless you take control of your life and decide to change your life in the manner you want to live. Without effort and without proper planning your fate will remain the same as it is in the present moment.

Wake up! Face the reality and act now! Start 2006 with a strong commitment. Choose your own slogan for the new year. Make it YOUR year. Say loudly and repeatedly "It's MY year, every day is MY day, every night is MY night and every month is MY month (January to December)".

Are you ready to jump start new year with a new slogan, new vigor and new enthusiasm? I am sure, you are, because it's YOUR year. Good luck in the year 2006!

Hifzur Rehman, the editor of

<http://www.selfimprovement.ch>

, is an author of motivational articles. His

website is a great source of inspiration to those who want to live a happy, healthy and successful life.

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