

TRADEMARK REGISTRATION – IMPORTANCE & NECESSITY [August 2009]

Trademark registration is the most important piece of a company's intellectual property protection program, which remains an unexplained process for most people. Without registration, a latecomer may register a mark identical to the company's mark. This registration by another user may block the expansion of the company's use of its trademark in other areas to register its trademark. Trademark registration gives you an assumption that you are the rightful owner of the mark. Registering your trademark also provides you with constitutional damages against any person who uses your mark in bad faith.

Some advantages of Trade Marks registration from commercial point of view are:

1. Trademark as an Intellectual Property Right is not only a legal asset, it also represents a commercial value & thus is a financial instrument.
2. To reap the commercial benefits, trademarks as an IPR may be sold, licensed, collateral or security.
3. To maximize revenues trademark as an IPR can be used for sponsorship, merchandizing and publicity.
4. Royalty for use of TM and brand can be paid upto 2% on exports and upto 1% on domestic sales.
5. Holding of IPRs in tax efficient manner - The owner of the IP sells it to an offshore company (ideally when the IP is still at a low value). The offshore company licenses some or all of the rights for the use of the IPRs to an onshore intermediary or agency company created in a jurisdiction offering tax benefits (i.e.. tax treaty network, withholding tax exemption for royalty payments and other advantages).
6. The acquisition of a trademark, a patent or a license can also provide the basis for expansion into new markets.

Role of IPRs in Venture Capital :
Venture Capital has been major drivers of innovation, economic growth, knowledge base industry and start ups. VC industry follows the concept of **"High Risk High Gain"**

Business Growth & Valuation Enhancement :
" Trademark as an IPR being intangible assets forms substantial part of assets of a company and thus increase the valuation" , "IPRs helps in expanding the market share and venturing into new markets and businesses" The acquisition of a trademark, a patent or a license can also provide the basis for expansion into new markets.

Importance of registered trademark in Joint Ventures and M&A

—

1. Company reputation & image, 2.Negotiation Power, 3.Valuation Finance Arrangement
IPRs can also be used as security in JV / M&A .

By Vandana Gautam
Trademark and Patent Attorney

For any queries please feel free to contact us at
www.rksassociate.com / Email:enquiry@rksassociate.com