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Sniff, Kleenex Is Snuffed Out of Canada

On August 25, 2023, Canadians were advised that KLEENEX was blowing out of town and would no longer be available in Canada (see Globe & Mail article).

Chatter about drippy noses being left unattended this coming cold season is a buzz. The misconception that KLEENEX is synonymous with facial tissue had some Canadians panicking. Indeed, the brand name is commonly used interchangeably with the product such that many think of them as one and the same. Despite so, Kimberly-Clark, the company that makes and sells KLEENEX brand facial tissue, has fought hard to maintain its brand rights in KLEENEX in Canada, and around the world, and has been successful in doing so.

Protecting a company's brand and trademarks is important, especially for critical brands like KLEENEX. The notoriety that comes with a brand like KLEENEX can be outstanding but ensuring the mark does not get genericized is critical.

Discussion

When a brand becomes so famous that it becomes a generic term for similar goods or services, the trademark risks losing its distinctiveness. Further there is a risk its value is depleted in the market. This can be a great loss to a company's intellectual property assets. An asset that should and can be protected.

The recent news about KLEENEX is a great opportunity to remind business and brand owners that a brand's value can be destroyed by its own success but should not be. Despite the wide misuse of "kleenex" as referring to facial tissue by some consumers, KLEENEX remains a strong trademark. Brand management, education and a robust trademark portfolio can help mitigate risks. Active legal enforcement and campaigns may also be valuable tools to protect trademark rights, see here for example.

How to Protect Your Trademark from Genericization

A trademark may become generic if care is not taken to manage a mark that is met with high success. Genericization tends not to happen overnight. It can happen however if the trademark is not used correctly in association with the associated goods or services (i.e., it is not marked on the product itself or in

advertising), if the trademark owner fails to enforce its trademark rights, and/or fails to educate the public on the proper name of the goods or services associated with the trademark.

There are several strategies a company may use to prevent its trademark from becoming generic so that the mark can continue to be used to distinguish itself in the market and maintain its value. Below are a few practical suggestions.

Use "Brand" Or Add a Descriptor After the Trademark

Help educate consumers that a trademark is a brand and is associated with the source of the product, but is not the product itself. Adding descriptive terms of the goods or services after the trademark will make it clear the brand name should not be used as a generic term for the product. KLEENEX for example is often marketed as ‘KLEENEX brand facial tissue’ or “KLEENEX® Brand Tissue”. Consumers may also appreciate that other ubiquitous marks have adopted a similar approach, consider for example that a leading bandages brand is typically branded as "Band-Aid® Brand".

Use a Trademark Symbol, Design Marks and Build up Your Portfolio

Adding the TM symbol for unregistered trademarks and the ® Registered symbol for registered trademarks after a company’s trademark informs the public that the mark is a trademark and is being used as such. This minimizes confusion and bolsters the fact that the brand is a protected intellectual property right and not the good or service itself.

Design marks and non-traditional marks (which include a three-dimensional shape, a hologram, a moving image, a mode of packaging goods, a sound, a scent, a taste, a texture and the positioning of a sign) are another great way to optimize a trademark portfolio to mitigate the risk of a company’s brand becoming generic.

In the case of KLEENEX, according to a search in CIPO’s trademark database, there are numerous word marks and design marks registered— not only for facial tissue but other related products like bath tissue, paper towels, absorbent pads and facial products. According to some of the news media about KLEENEX leaving Canada, some products bearing the trademark KLEENEX will continue to be available in Canada even after the facial tissue product no longer is. As a related aside, this is also important from a brand strategy perspective and will help ensure the valuable marks are not susceptible to expungement by maintaining some ongoing presence in Canada.

Educate

Educating the public can go a long way to protecting a company’s most important brands. Social media and advertising, if used with intention, can be a great tool to educate the public on the importance of the brand, and the correct way to use a trademark. See for instance, this video by the Velcro Brand Companies. Other examples include Xerox's efforts to educate its consumers in the US on the use of its brand name, and other advertisements with the tagline "You can't Xerox a Xerox on a Xerox". Similarly, see Nintendo's ad "There's no such thing as a Nintendo".

Conclusion

Protection and enforcement are critical parts of a strong brand strategy. It seemingly saved KLEENEX from becoming genericized and losing valuable trademark rights. While other brands have faltered. It is important to consider as well that a trademark may become generic in one country without becoming generic in another. One example is ASPIRIN, which was formally protected under registered trademarks in the United States but has been found to be generic and has been invalidated. However, ASPIRIN is still considered to be a valid trademark in Canada.

Brand owners cannot afford to be complacent when it comes to enforcement – otherwise, they run the risk of losing their mark's distinctiveness and value. Brand recognition is a key to success, but it is important to develop and implement brand policies to protect and enforce trademarks to maintain distinctiveness. This fosters the ability to build and strengthen brand awareness while preventing the genericization of successful marks. As Canadians get ready to say farewell to KLEENEX brand facial tissue, we may wipe our tears with other branded facial tissue, but we should applaud KLEENEX for its strong protection and enforcement of the brand and reflect on that lesson.