

## TRADEMARK MANAGERS AS DOCENTS

Visitors to the many museums dedicated to various different subjects often find themselves led through the museum by a docent. These docents are generally volunteers who are not full-time employees of the museum. Docents are typically people who have made themselves experts in whatever is displayed in the museum, and they provide both the color and the commentary which make the exhibits more meaningful for visitors.

In a trademark sense, a trademark manager is a docent. This is because an effective trademark manager should be able to provide the color and the commentary on the use of trademarks in the life of a business.

Much like many museums endeavor to explain the earliest use and development of something that has become well known to visitors with the help of a docent, so too must trademark managers be able to explain the earliest use and development of a trademark that has become well known. This is because trademark rights in the United States are based on early and continuous use.

In a museum, visitors typically observe well preserved artifacts which tell a story. In the drawers and files of a trademark manager should also appear well prepared artifacts of trademark use. The question is often asked by new trademark managers – what should be saved? The following list serves as a guide:

- Catalogs. If catalogs are re-done annually, then two hard copies of these annual catalogs should be kept -- one copy that never leaves and one copy for use by others if needed.

- Promotional Materials. Included are product sheets, fliers, and ad copy. Because promotional materials are not often dated, it is important to ensure that these documents are dated before filing.
- Product Samples and/or Instruction Sheets bearing a trademark. While in some cases, pictures of products are sufficient (showing the trademark on the product), the best evidence of trademark use is the product itself. Like promotional materials, it is important to record the date of use of a trademark on a product.
- Commercial Use Documentation. Records of sale in both intrastate commerce (if applicable) and interstate commerce are needed.
- Internet Advertising. A copy, either electronic or on paper, should be made of the creation and evolution of a website. As with other items, dates in the history of internet advertising are very important.

In many businesses, there is a Marketing Services Department. Marketing Services Departments typically maintain files of marketing/sales materials for a variety of reasons, to include ideas for future promotions. Rather than maintain a separate set of trademark use files, trademark managers are well advised to work closely with their Marketing Services Department for documentation of trademark use. Most importantly, a Marketing Service Department should be advised that trademark managers must be consulted before any records showing trademark use are permanently destroyed.

Still other businesses maintain small museums or exhibits in the lobby documenting business growth. While such exhibits are primarily for visitors, trademark managers are well advised to coordinate with the person designated as an internal

curator for the visual or tangible history of a business to ensure that valuable documentation of trademark use is not discarded.

Yet other businesses have an "attic" somewhere. Such attics can have enormous value to trademark managers. Unfortunately, the location of business attics is often forgotten. Trademark managers are well advised to learn the location of the attic for their business and possibly even volunteer to take over responsibility for those items in the attic showing trademark use.

The bottom line is that an essential part of trademark management is knowing and explaining the history of trademark use by a business, much as a docent knows and explains what is shown in a museum.