

Marketing and Law: A strategic couple

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It is difficult to find two professions more dissimilar than publicist and lawyer. The first wear sneakers and jeans, use creativity and intuition. The other, still clinging to the tradition of the suit and the tie, trust more in certainties, trying minimize unnecessary risks.

They look like two opposing and disconnected worlds, but only in appearance, since both necessarily converge. Examples of these encounters, often with more appearance of misunderstandings, are conflicts over misleading or comparative advertising comparative before the Board of Advertising Self-Regulation (CONAR), administrative or litigious proceedings for trademark registrations, litigation by unfair competition and arbitration lawsuits for assignment of domain names.

Advertising and law should "converse", find communication channels and a common language that allows companies that use marketing and advertising tools, to avoid their commercial projects become dilated or trapped, if the possible obstacles or litigation can foresee and, to a certain extent, be avoided.

In the words of the classic song of Los Jaivas, that publicists and lawyers "be friends and be brothers"*.

Start well. Creation of a brand

As a first step in this promotion of common interests, the need arises for tend to a coordinated work between marketing and the

legal area in the process of creating a brand. Experience shows that previous legal check work of a brand, in its initial stage of creation, can save time and resources.

As a first step, it is necessary to clarify that a good brand is not the same as a registrable brand and that a registrable brand is not the same as a "good registered brand".

Let's go for parts. Why should we register a brand? Because the registration of a brand grants its exclusive and excluding use in the market to distinguish certain products or services, and for a successful brand it's no small thing.

A registered trademark must be distinctive, that is, should not describe the products or services that seeks to distinguish or have a common use in the market.

Many times, those interested in creating a brand are tempted to approach to desirable concepts ("Sun" for sun blocks, "med" for medical services, for example). A brand of this type, called "evocative" by the doctrine, although it maybe accepted to registration, will have a lower degree of protection than that of an invented brand, which the doctrine names "of fantasy".

Of course, a "fantasy" brand you must provide it with desirable content, but in terms of protection, it's worth the effort.

Second, to be registered, a brand should not be confusingly similar to other previously registered or requested by another trader for the same scope of protection.

Many entrepreneurs just "google" the brand of interest and search the exact identity on the site www.inapi.cl ... big mistake.

The search for strict identity is necessary, but not enough. In fact, a request for a brand can be rejected even if it is not identical to another previously registered, but confusingly similar.

An Industrial Property lawyer should have the technical tools to perform searches by similarity and have the skills and experience to determine, with a greater degree of certainty, if two related signs will be considered or not by the Authority as "confusingly similar".

These considerations are only a first approach to a consultancy that should be much wider to protect and strengthen a brand in its entire spectrum.

Without pretending to interfere in the "sacred creation process" of a brand asked for advertisers and marketing professionals, a qualified lawyer turns out to be a fundamental strategic partner not only to create registrable brand, but a good registered brand.

* "Let's be friends, let's be brothers" ("March to the Interior of the Spirit", Los Jaivas, 1972).