

ANALYSIS

**IMPORTANCE OF
REGISTRATION IN THE FACE OF
THIRD-PARTY USE**

FEBRUARY 2024



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In the past few decades, informal commerce has witnessed a substantial surge in Bolivia. It is common to encounter individuals offering products on the streets identified with trademarks, many of which are well-known brands. However, these trademarks are frequently utilized without proper authorization, as they are owned by other rights holders.

Conversely, there has been a notable uptick in entrepreneurs engaging in formal commerce, actively offering the sale of a diverse range of products and providing services. For the most part, the offering of products and/or services is carried out through social media and various internet platforms that are readily accessible to us on a daily basis.

There are cases wherein an entrepreneur initiated the sale of a product or provision of a service under a brand that they created themselves. What initially began as a small venture has evolved into a flourishing business. Consequently, they commence investing more in advertising endeavors to broaden the awareness of their brand among a larger audience. Upon the brand acquiring greater market recognition, the risk arises that third parties may improperly seek to exploit its fame or, worse still, register the brand as their own, thereby depriving the rightful owner of their entitled rights. This risk has gradually created awareness of the need to register trademarks for protection purposes, and most importantly, to have the legal instruments essential for their defense.

According to a review of the online information system of the National Intellectual Property Service (SENAPI, in Spanish), during the 2023 term, there were 5,900 registration applications submitted, from which approximately 70% corresponded to trademark applications filed by foreigners. This means that approximately 30% of registration requests come from national applicants. This data is significant as it indicates a rise in local investments.

Compared to around a decade ago, it is evident that individuals are now gradually recognizing the importance of registering the trademarks they utilize to sell their products and are commencing the process of trademark registration. In some cases, these are entrepreneurs who have invested in creating a distinctive brand that encompasses the details they wish to present to the public. However, there are other applicants who utilize well-known and notorious brands as a foundation, making slight modifications in an attempt to evade detection by the Trademark Office and the vigilant rights holders who monitor their already registered trademarks. This is where the rights holder, possessing a pre-existing right, can take action against such applications.

On the other hand, a concerning risk is the proliferation of informal traders who, unlike companies and entrepreneurs, do not invest in creating a brand, let alone promoting it. Instead, they simply use the brands of other individuals or entrepreneurs, often well-known and recognized brands, in order to capitalize on and benefit from the established reputation of the registered brand.

In the case of companies, whether international or national, it is evident that they take precautions to register the trademarks they employ. Through registration, they gain the ability to pursue legal actions against such traders, thereby preventing their exploitation of the brand's acquired popularity. However, certain entrepreneurs lack the capital to seek advice or in many cases manage the registration process for their brand. Consequently, they are vulnerable to exploitation by third parties who may capitalize on the brand's potential fame over time.

It is indeed remarkable how some individuals even go to the extent of using trademarks without making any alterations, merely printing the labels and affixing them to the products they intend to sell. This practice evidently poses risks to consumers as well. This risk escalates particularly in the case of food and medicines. Moreover, items such as tools, clothing, furniture, and others often lack the warranties provided by reputable companies. The objective behind such unauthorized use by the trademark infringer is to capitalize on the fame of the registered brand, either by copying it directly or using it as is.

Faced with these situations, many companies, entrepreneurs, and individuals have started registering their trademarks to ensure protection and thereby gain an advantage in pursuing legal action against third parties who might use or alter the registered mark, as regulations protect those with established rights.

In the realm of copyright, a person enjoys a right from the moment they create a work, painting, music, etc. Registering it with the Competent Office simply formalizes this and enables them to take action against third parties, the same that they could initiate even without registration. Trademarks must be registered in the name of the owner to establish a legal right upon which a claim can be based.

In conclusion, it is important for anyone, including companies, entrepreneurs, or individuals, intending to launch a business, to prioritize registering the trademark they intend to use for offering products or services, given the evident possibility that third parties may improperly use a brand that could potentially become well-known and famous.

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