

## A slogan is an important communication tool. How can you protect it?

*A slogan cannot always aspire to trademark protection.  
However, the legal system and more specifically legislation on  
intellectual property offers alternative protection and registration tools*

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A slogan is a fundamental tool in advertising and commercial communication, it consists of captivating expressions that encourage the consumer to buy the products it identifies: it is characterized by short and incisive sentences designed to be easily remembered by the public they are addressed to.

When a slogan does not become a mere pay-off of a main trade mark, but its aim is to be used as a true, distinctive trade mark, before proceeding with the corresponding filing it is important to remember that such a sign is open to *ex officio* objection if it immediately conveys information relating to the type, quality, destination or other characteristics of the products or services it identifies.

More specifically, slogans are open to objection if the target public perceives them only as a simple promotional formula – which enhances the qualities of the products or services in question – and not when, apart from their promotional function, the public perceives them as an indication of the commercial origin of the products or services involved (main function of a trade mark).

The criteria to use when assessing the degree of distinctiveness of a slogan must not be stricter than those applicable to other types of signs. In this sense, a slogan can be considered distinctive and aspire to trademark protection when:

- it is a play on words;
- it introduces elements of conceptual intrigue or surprise, so that it can be perceived as a fanciful, surprising, or unexpected sign;
- it has a particular originality or resonance;
- it triggers a cognitive process in the mind of the target public, or in any case it requires an interpretative effort that makes the meaning of the claim vague, original and impenetrable, or the sequence of words does not allow to see a mere causal link (so-called secondary meaning). **The fact that the meaning of the slogan is simultaneously, if not in the first instance, perceived as a promotional formula does not affect its distinctive character.**

In addition to the above, the following peculiarities of a slogan can also contribute to its distinctiveness:

- unusual syntactic structures;
- the use of linguistic and stylistic devices, such as alliterations, metaphors, rhymes, paradoxes etc., although often the use of unorthodox and captivating grammatical forms does not meet the requirement of sufficient originality.

What matters, therefore, is that consumers are not able to establish a clear and direct link with the products and services claimed in the filing. There are numerous cases of slogans, even some very successful ones, which have been granted trade mark registration: think of *"just do it"* attributable to Nike Innovate C.V; *"Taste the feeling"* in the name of The Coca Cola Company, *"I'm Lovin'It"*, the well-known trade mark of McDonald's Corporation.

When an advertising expression fails to aspire to registration as a verbal mark, there are some alternative means of protection.

Depending on the nature of the slogan and how it is actually used in corporate communication, the advertising message can be filed as a sound mark (jingle), as a motion mark or as a design or model in order to protect its graphic idea.

Furthermore, if copyright law requirements are met, or if the slogan is endowed with creativity and originality, a slogan can be protected as intellectual work. In this case, no registration will be required, except for the purpose of giving the work a certain date and attributing a precise authorship to it.

Finally, a slogan can be protected, in its purely advertising function, through the Istituto dell'Autodisciplina Pubblicitaria (IAP), in order to protect the creative elements that are part of a new advertising campaign, by filing a notice of protection (or pre-emption) that guarantees a priority right on the slogan to the legitimate owner for a period of 12 months, renewable for the same period.

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