



or business has a *bona fide* intent to use the trademark. The trademark may not already exist or the application will be denied.

In the personal computer software industry trademarks are a means by which companies build brand awareness. Everyone knows "Windows 95" is a registered trade mark of Microsoft Corporation. Name recognition conveys quality and consistence.

In the highly competitive PC market the value placed on a trademark, or brand name, may be worth millions of dollars. Therefore, it is well worth the time and effort to register and protect a trademark. The submission process of a trade mark is as follows: 1) Seek the profession services of a Patent Attorney for document preparation; 2) Application is submitted to the U.S. Patent and Trademark Office (PTO) or the Canadian Trademarks Office; 3) PTO publishes the trademark for opposition; 4) If no objections are received the trademark is granted; 5) If objections are raised; a) Opposing party has the right to subpoena documents and take testimony; b) Evaluate evidence to determine if mark will create confusion with existing mark; c) Losing party may appeal (to: PTO Board, U.S. Court of Appeals, U.S. Supreme Court, or Canadian Federal Court)

Trademark Infringement

A party possessing a federally registered (or unregistered) trademark may sue an individual or business for trademark infringement if they believe their trademark has been wrongfully used. Preliminary and permanent injunction for relief can be sought. Damages typically include the defendant's profits attributable to the infringement.

Evaluation is a labor intensive process and one in which evidence is gathered to clearly show that the defendant's mark is likely to create confusion as to the source of the goods or services. This analysis is largely based on: 1) Trademark appearance; 2) The relationship mimicked by the products or services and the respective trademarks; 3) Whether the plaintiff expects to expand trademark use to products similar to defendants; 4) The intent of the defendant in adopting the trademark; 5) The degree of care a consumer might use when selecting a product or service; 6) Consumer survey evidence.

Both parties rely heavily on consumer surveys to plead their case. Expert witnesses are typically called by both sides.

In addition, intellectual property owners also may protect their trademark through threat of litigation to prevent use of a mark when the plaintiff believes consumers may be misled due to product or service association (ie. product endorsement, sponsorship or affiliation). This varies slightly from the traditional definition of infringement that assumes