



PROTECTING YOUR BRAND

What elements of your message and look are 'sufficiently distinctive'?

BY MELINDA S. GIFTOS

Much time in credit union branding efforts is rightly given to identifying a credit union's message and the core values to be conveyed to members and potential members. This identification requires that both the marketing team and other executives take a hard look at what the CU really stands for and where it wants to move forward in the marketplace.

However, selecting the CU's message or identity is not the only important consideration in a successful branding campaign. An often overlooked aspect of branding is effectively selecting, creating and protecting your valuable intellectual property.

BE SUFFICIENTLY DISTINCTIVE

Branding involves the use of many elements, including trademarks, service marks, slogans, tag lines, colors, Web sites, the look and feel of the CU itself, and any other aspects of its business that members encounter. Many of these elements are entitled to protection under federal law if selected and used properly. U.S. trademark law protects any words, names, symbols, devices, or any combination thereof, used to identify and distinguish the goods or services provided in connection with such words, names, symbols or devices, and are used to identify the source of such goods and services.

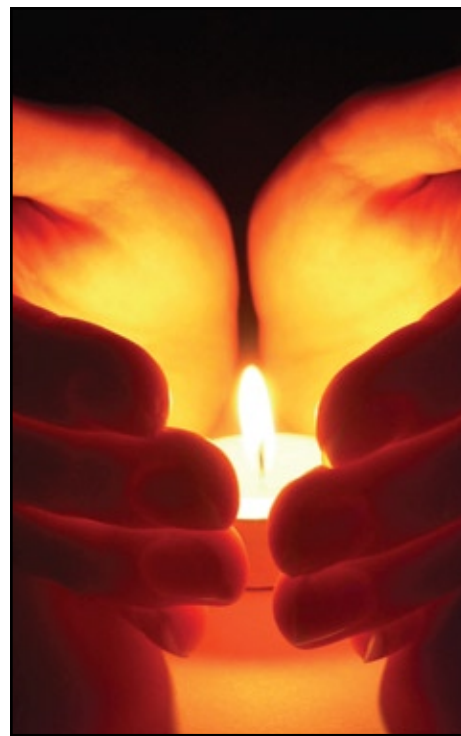
However, not all trademarks are created equally. To receive protection, the marks must be sufficiently distinctive. Our laws recognize a spectrum of distinctiveness:

• **Generic marks:** Generic terms, common names and functional

elements do not serve to distinguish a mark or identify a source of goods and services. Therefore, they are never protectible as trademarks or trade dress. An example of a generic term is the phrase "credit union." The phrase merely states the common name for the goods and services, not the source from which the goods and services are provided. Because it is essential to competition for others to be able to use that name, one person or business cannot claim exclusive rights in it.

• **Merely descriptive marks:** Descriptive terms, laudatory terms, geographic terms and design features are never considered inherently distinctive. These may serve as protectible trademarks only after they have first acquired secondary meaning in the minds of the relevant purchasing public through long, continuous and exclusive use of the mark with the goods and services. Even after obtaining secondary meaning, these are considered weak trademarks. An example of a descriptive mark is "Orange County Credit Union." This mark merely describes a credit union in a specific geographic location. Therefore, the only way to obtain federal protection for the trademark is to prove that the mark has been continuously and exclusively used for at least five years and consumers now recognize the mark to identify the source of the credit union's goods and services.

• **Suggestive marks:** Suggestive marks may be inherently distinctive and do not require a showing of secondary meaning before they are entitled to trademark protection. Suggestive terms are not descriptive of the goods and services provided, but instead



make a subtle suggestion regarding the nature or quality of a good or service. An example of a suggestive mark is "CU@HOME." The mark suggests CU services which may be accessed at home, but does not necessarily describe the goods and services. Therefore, the mark is suggestive and entitled to protection as a trademark.

• **Arbitrary or fanciful marks:** Arbitrary and fanciful marks are the strongest trademarks. These marks are strong because they do not bear any specific relationship with the goods provided in connection with them. An example of an arbitrary mark is "Altura Credit Union." Altura is not a word typically associated with financial services and, therefore,



is arbitrary or fanciful when applied to that industry. The strength of these marks emanates from the fact that they are not related to the goods and services provided because they are so distinctive and likely to stand out in the minds of consumers.

When selecting trademarks, tag lines, slogans and trade dress, it is important to keep this distinctiveness spectrum in mind. Are you selecting a trademark, tag line, slogan or trade dress that is sufficiently distinctive so that you should be entitled to exclusive rights in that name?

MARKETING MAKEOVERS

Historically, CUs are known for undertaking very conservative marketing efforts and have done very little to market themselves distinctively or to differentiate themselves from their competition. Indeed, CUs appear to have hung their hats on the concept of sameness and consistency in the industry. Take, for example, common CU trade names. A significant number of credit unions are currently named after their geographic locations, their membership constituencies or their conservative principles, such as “Madison Credit Union,” “State Employees Credit Union,” and “First Choice Credit Union.”

Unfortunately, however, all these examples are highly descriptive marks not entitled to trademark protection until they acquire distinctiveness through long and exclusive use. And the “exclusive” component is quite important to trademark protection in these examples. Many CUs are finding that the names they have been using for many years are also being used by other credit unions throughout the country. Given the fact that our marketplace has become global thanks to innovations in technology, this is very problematic.

Long gone are the days consumers solely encountered local businesses. A simple Internet search of “First Choice Credit Union” reveals a

multitude of different CUs operating under the same name. This is problematic for two reasons. First, a CU operating under this name has a very weak trademark that is not entitled to receive much, if any, protection under our laws. Second, the fact that more than one CU offering the same services is using the same name greatly increases the risk that another party could allege trademark infringement.

Because of these very issues, many CUs are undertaking vast marketing makeovers to move away from the traditional descriptive names and to obtain more valuable rights in their names. Take for example, Motorola Employees Credit Union-West, which changed its name to TruWest Credit Union. This change not only made the credit union’s primary trademark more arbitrary, but also reflected its core values of trust and honesty. Similarly, when John Deere Credit Union had to change its name, it selected Veridian Credit Union. Again, this selection involved

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an arbitrary mark and incorporated the word “verdant,” which means “green” and “thriving growth.”

Name changes and rebranding are also occurring upon CU mergers. Recently, for example, two of southeast Michigan’s fastest growing and most successful credit unions, T&C Federal Credit Union of Bloomfield Hills and USA Credit Union of Auburn Hills, finalized their merger and new name, “Genisys.” This new name is highly arbitrary, yet recognizes the member roots of each of the merging credit unions—General Motors for T&C and Burroughs/

RESOURCES

Read bonus coverage from this article, “Protect Your Brand’s Rights” at cumanagement.org. Choose “October 2008” from the “Past Issues” pull-down menu.


Also read “The Legal Side of Branding” and related articles on cumanagement.org. Choose “Article Archives” then “Marketing” and then “Branding.”

And read more about branding, including “9 Point Brand Self Exam” and “Do You Love Your Logo?” on the CUES Nexus Connection blog, at cuesskybox.typepad.com/nexus_connection/branding/.

Unisys for USA Credit Union. A clear shift is emerging and successful credit unions are making a name for themselves in a new way.

BEYOND THE NAME

The primary focus of this article has been on CU names because they are the most obvious and fundamental elements in branding. However, all these concepts are equally important for selecting and implementing individual product trademarks, service marks, and slogans. Each protectible element of a CU’s branding is quite valuable and should be protected if you will use the elements consistently and on a long-term basis.

Once you have decided which trademarks and slogans you would like to incorporate in your CU’s branding, you should take steps to adequately protect your rights and to ensure you are not infringing on any third party’s rights. Read more about how to do this in bonus coverage from this article, “Protect Your Brand’s Rights” on cumanagement.org. Choose “October 2008” from the “Past Issues” pull-down menu at the bottom. 

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