INTELLECTUAL PROPERTY

When Kimono Became Kimohno! – Don’t Be Caught Off Guard When Choosing Your Trade Mark

31 July 2019 *3 min read*

By Janine Hollesen, Director

Recently the reality star, Kim Kardashian, was caught in the cross-hairs of a trade mark storm after choosing the trade mark KIMONO for a new line of shapewear. Trade mark applications were filed in the USA in logo format as shown below:



The power of social media once again showed its force with many posts decrying Kardashian's appropriation of Japanese culture by adopting and using the mark. Although Kardashian may possibly have considered KIMONO to be a clever play on her name and the garment, it lead to a flood of negative social media comments and the creation of the hashtag #KimOhNo!

Kardashian has decided to change the trade mark which decision will undoubtedly also result in a significant waste of money which has already been spent on conceptualisation, branding and needless to say the implementation of the line of products.

The following factors could be considered when choosing a trade mark:

- Avoid descriptive, generic and geographical marks;
- Arbitrary or made-up words are more likely to be evoked by consumers thereby ensuring that your product stands out from the rest;
- Suggestive marks could be considered – bearing in mind that on the spectrum, these marks could have lesser protection;
- The mark need not have any association with the product or business – let's think about APPLE and AMAZON being the most valuable brands on the planet which are regular words in the English language.

So, besides these factors, the possibility of cultural appropriation is also to be taken into account when choosing a trade mark.

While on the topic of celebrities in the fashion world and their choice of trade marks, Tyra Banks is to launch her own brand of ice cream under the mark SMIZE CREAM. According to internet reports Banks invented the word SMIZE for the phrase "Smile with your eyes".

If the factors set about above are taken into account, SMIZE is a made up word which is neither descriptive nor does it create any association with the product which will result in a strong mark which is ideal when seeking trade mark registration and the enforcement thereof.

As result, when choosing a mark, a number of factors are at play and it is therefore important to obtain trade mark advice from our IP team which has the expertise to assist in South Africa and across the world in conducting searches, ensuring the registration of your trade marks and in respect of IP strategic planning and portfolio management.

If you would like to learn more about Intellectual Property please visit our practice area page.



Janine Hollesen

Head of Intellectual Property

View Profile