



BANKING In The INFORMATION AGE

In this day and age, it is all the more important for banks to take proactive and vigilant steps to seek protection for their intellectual property (IP), which is one of the main tools to attract business and customers

In the information age, consumers are overloaded with marketing messages that come from various sources when they read newspapers, watch television, or browse the internet. The brands in every industry are vying for attention and the banking industry is obviously

affected by the change happening in the business and social environment. The banking industry in India which started changing post 1991- economic liberalisation phase - when the government opened up the banking sector to increase competition with a view to offer better facilities,

products and services to customers. During the last 10 years period, the banking industry has come a long way in adapting to technologies and providing technology-based services to customers which are at par with international standards. Most banks these days offer alternate channels

such as smart cards, ATMs, usage of the internet, mobile and social banking to its customers.

With increasing competition, banks are realising the need to build brand/s and brand image to retain and attract customers. The colours, logos, images, domain names, advertising messages, slogans, ATM branding, social media tools etc., are being used by players in the banking industry to distinguish them from others. With the new banking licence soon to be issued, the focus of the current players is likely to shift to expanding operations and acquire new customers.

In this expansionary phase, trade secrets and intellectual property are perhaps two areas most overlooked by the banking industry. Thus, as a first step, the banks need robust IP policies to protect information on technology, trademarks, customer lists, finances, strategy, prototypes and M&A plans that are at great risk of falling into the wrong hands. The result can be a bank losing its customers' trust, business and at the same time, risk facing legal liability.

Trademark And Copyright

The first step for any commercial enterprise is of course to seek statutory protection of trademarks, copyright, designs and patents. Starting with the name of a bank, the colour scheme, livery, logos and slogans are all valuable Intellectual Property for a bank. At the same time, banks need to make sure that brands are represented in a consistent manner and the right shade of colour is used on all its products and services. Further, having brand guidelines in place helps in delivering the right message to a customer and also helps in identification of a source.

When launching any new service, the name, design element, features and benefits to consumers should be examined by banks from an IP stand point to see if they can be protected to retain a competitive edge and stop similar products being offered by other players in the sector.

To avoid risk of infringement and trespassing on existing rights, the clearance searches play an important role before launch of a product or service. The designs/artwork to be used for example on a ATM card or a credit card and building the advertising campaign for product launch must be cleared by an IP expert to assess risk to use and registration. It can be embarrassing and expensive to withdraw a product or service and/or make changes to it post launch. In addition, it is also worthwhile to conduct company name searches, directory searches, and domain name searches - which is also an equally important step before any launch.

The banks need to adopt a proactive approach towards protecting their brand name. As a proactive measure, banks can undertake periodic search of the Registrar of Companies' database to keep track of any new company being formed with similar name as that of a bank and immediately take any corrective measures if any similar names are found to be in use. Many a time, small brokerage firms and those providing financial consultancy adopt names that are identical or similar to the established player/s. Thus, such unauthorised use can result in consumer confusion, brand dilution and loss of reputation for a bank.

Recently, American Express obtained a permanent injunction from Delhi High Court against a company operating under the name Amex Financial Services Pvt. Ltd. American Express alleged that AMEX, as an acronym, has been in use for their company name since 1969. They had also registered several domain names such as amexfinancial.com, amexcard.com, amexbiz.com etc. The court came to the conclusion that the Defendants are operating in the same field. No explanation was provided by the Defendants for adoption of the trade mark. The court also awarded ₹500,000 as damages to discourage other parties from indulging in similar acts of deception.



Ranjan Narula
Managing Partner

RNA, Intellectual Property Attorneys

Trade Secrets

The computer programmes, databases are often employed by banks to store customer information, run their operations and prepare strategy reports. These are of course proprietary to an institution. However, they are in the hands of users/employees. Many of them do not realise that these are trade secrets and frequently copy such data for use in portable storage devices. Thus, protecting the data and devising policies for data security are important. Most banks do have them adequately covered by their 'terms of employment' by having an employee acknowledge copyright in databases, having employees sign non-compete or non-disclosure agreement/s. At the same time, banks should invest in training and notifying their employees that certain information is confidential - something an annual trade-secret inventory can assist with - and explain what actions the employees are expected to take to maintain confidentiality.

With technologies evolving at a faster pace, the banks need policies that not only address new hires but also employees who leave the organization. Seeking certificates from employees that they have no data with them or seeking return of the data as part of final settlement of dues is becoming common in the

banking industry. At the same time, having technology to monitor servers and keeping track of users are good preventive mechanisms.

Protection Of Domain Names

As banking industry is rapidly moving away from the traditional way of operation that is a consumer visiting a bank branch to carry out a transaction, the online platform is becoming an important interface between customers and the bank. The cyber squatters realise this and often register domain names similar to a well known bank domain address web portal so as to attract internet traffic and offer products/services in the financial sector. In some cases, a similar domain name may be used to commit serious frauds by creating websites with similar look and feel

Trade secrets and intellectual property are perhaps two areas most overlooked by the banking industry. Thus, as a first step, the banks need robust IP policies to protect information on technology, trademarks, customer lists, finances, strategy, prototypes and M&A plans that are at great risk of falling into the wrong hands

that may ask consumers for account numbers and personal details. Thus, banks need to be vigilant about such websites and take remedial action. The courts have appreciated that such activity cannot be permitted and thus restrained any infringing use.

In a case filed by ICICI Bank at the Delhi High Court against a party who had deliberately and wilfully violated the trademark ICICI by using the domain name www.icicigroup.com, it was pleaded by ICICI Bank that the very adoption of the said



domain name www.icicigroup.com was dishonest and confusingly similar to their trademark ICICI and domain name www.icicibank.com and thus it amounted to infringement of the statutory rights in their mark/name. The Court after examining the parameters of the case came to a conclusion that the adoption of the domain name www.icicigroup.com by the Defendants was dishonest and ICICI Bank had established its case for grant of injunction in its favour.

Social Media And Banking Industry

Social media is often used by banks these days to understand people and have a closer relationship with them. Further, it helps them to promote their products and services in a not-so-formal environment. However, despite its easy reach and convenience for the bank, this could also prove to be challenging. It is advisable to have a clear guideline in place to monitor and address any negative comments and well thought strategy (both internal and external) before social media is adapted to advertise products or services. It should not be expected that all sentiments towards the products or

services would be generally positive, which is why banks should not be dismayed when negative comments arise; rather take corrective action in those circumstances. In addition, banks should also be vigilant about the generic use of their brands by social-media users and look for ways to prevent their trademarks from losing distinctiveness and therefore, legal protection. Banks should also keep a careful eye on infringers on social networks, in particular, the use of fake pages and usernames.

Conclusion

To sum up, the banking sector has witnessed rapid growth in the past decade. Economic development, growing income (especially in the urban areas) has facilitated this growth. The next phase will see many tier II and III cities being targeted by banks. Thus it becomes all the more important for banks to take proactive and vigilant steps to seek protection for their intellectual property, which is one of their main tools to attract business and customers.



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