



International Trademark Association

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Educational Brief

The Importance of Pharmaceutical Trademarks in Protecting Public Health

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THE IMPORTANCE OF PHARMACEUTICAL TRADEMARKS IN PROTECTING PUBLIC HEALTH

1. Introduction

A trademark is a word, phrase symbol or design, or a combination thereof, that identifies and distinguishes the source of the goods of one party from those of others. By providing a consistent method of identification, trademarks help consumers select the goods and services they want, engendering goodwill in the mark and providing incentive for manufacturers to produce goods and services of a consistent quality. In the absence of strong trademark protection, consumers would face constant confusion as to what choices they face in the marketplace.

Pharmaceutical trademarks play an especially important role. While generic names have their role in providing consistent terminology for certain compounds around the world, it is trademarks that enhance public health by (1) assisting health professionals reduce medication errors, (2) enabling consumers to choose the medications that are right for them, and (3) providing manufacturers with the incentive to both develop new drugs and monitor the safety of existing drugs.

2. Pharmaceutical Naming Process

A. Trademarks

The development of a trademark for a new pharmaceutical product is a complex process that involves legal, regulatory, linguistic, and marketing considerations. The U.S. Patent and Trademark Office lists over 20,000 active trademark registrations and applications that contain the word “drug” or “pharmaceutical” in the identification of goods. Therefore, clearing a trademark for use on a pharmaceutical product is quite a challenging endeavor. The following describes the lengthy process followed by many pharmaceutical companies for the selection of a trademark for a new pharmaceutical. This process is designed to ensure that the public health is protected to the maximum extent possible.

Initially, the process begins with the development of a roster of name candidates. The names are checked against databases of pending or registered trademarks for related products. After narrowing the field, a more detailed trademark search is performed in many countries to eliminate names which might be considered confusingly similar to any existing trademarks. Name candidates are then subjected to linguistic screening to avoid choosing a trademark that has unintended meanings or connotations in any of the languages where the product is to be sold.

Many pharmaceutical companies include in the trademark clearance process a review by independent pharmacists, physicians, and other healthcare professionals, who evaluate the proposed trademarks for medication error potential. This review includes consideration of the trademark in oral and handwritten prescriptions. Also considered are other factors including dosage form, dosage strength, and route of administration. This independent evaluation offers insight into whether a trademark can safely be used or may potentially contribute to medication errors.

Once a trademark is finally selected, it is subjected to a review by regulatory authorities in the U.S., EU and many other countries. The U.S. Food and Drug Administration (“FDA”) and the European Agency for the Evaluation of Medicinal Products (“EMA”) independently review whether the product can safely be marketed under the trademark, providing a further level of assurance that the chosen mark is safe.

Furthermore, the owners of many if not most pharmaceutical trademarks also seek to register their marks in the various national trademark offices where the pharmaceutical will be marketed. In most countries, these applications are subject to review for confusing similarity to prior trademarks. This independent review by government employed trademark experts provides yet a further layer of assurance that new pharmaceutical trademarks are not likely to cause confusion with other trademarks already in use.

B. Chemical Names and Generic Names

In addition to a trademark, a pharmaceutical also has both a chemical name and a “non-proprietary” (or “generic”) name adopted by national and international nomenclature agencies.

Chemical names precisely describe the chemical structure and tend to be quite long and complex. The primary function of a chemical name is to identify the exact compound in language chemists can understand, which is a different language than most health care professionals or consumers speak.

Non-proprietary generic names are typically less complex than chemical names, but more complex than trademarks. The primary function of a generic name is to assist health care professionals in identifying the pharmacological properties of drugs.

The World Health Organization (“WHO”) has granted International Non-proprietary Names (INNs) since 1953 for all pharmaceuticals that are to be sold internationally. The cumulative list of INNs now includes approximately 7000 names, and this number grows every year by 120-150.

Under the INN system, names of pharmacologically-related substances demonstrate their relationship by using a common “stem.” Different “stems” are assigned to categories of drugs based on their chemical and/or pharmacological

properties. Additional letters, usually as a prefix, are added to the stem to create the generic name. For example, the stem for a class of cholesterol reducers is “vastatin,” which in this case is used at the end of the INN. Included in this category are the generic names “simvastatin,” (ZOCOR[®]), “atorvastatin” (LIPITOR[®]), and “pravastatin” (PRAVACHOL[®]).

While INNs are *unique*, that does not necessarily mean they are always *distinctive*. Indeed, because drugs in the same class share the same stem, there is a degree of built-in similarity for INNs for pharmaceuticals that are in the same class. Such similarity is useful to health care practitioners in identifying the pharmacological properties of a particular drug, though it does create its own type of potential confusion.

INNs are considered to be in the public domain; hence their designation as "nonproprietary". They can be used without any restriction whatsoever to identify pharmaceutical substances. The use of INNs is normally required by national legislation or, as in the case of the European Community, international legislation. As a result of ongoing collaboration, national names such as British Approved Names (BANs), Dénominations Communes Françaises (DCFs), Japanese Adopted Names (JANs) and United States Adopted Names (USANs) are nowadays, with rare exceptions, identical to the INN.

The United States Adopted Names Council, sponsored by the American Medical Association, the American Pharmacists Association, and the United States Pharmacopeial Convention, with participation from the FDA, issues USANs, which are unique nonproprietary names assigned to pharmaceuticals marketed in the United States. The USAN Council works closely with the INN Programme of WHO, to enhance global standardization of drug nomenclature and to ensure that drug information is communicated accurately and unambiguously.

3. The Benefits of Pharmaceutical Trademarks

A. Trademarks Assist Health Professionals Reduce Medication Errors

The rigorous process of selecting a trademark is designed to ensure that the mark is truly unique *and distinctive*. There is no reason to believe that a drug naming system that relies exclusively on generic names would reduce medication errors that are attributed to name confusion. Indeed, if required to rely exclusively on generic names, many physicians, pharmacists, nurses, and others could encounter difficulty in remembering and properly spelling such names, and would be more likely to be confused by the close similarity of many generic names for pharmaceuticals in the same category, which would likely result in many more errors. By using unique trademarks for each drug, health professionals have a much easier time ensuring that the right medication is being given to the patient.

B. Trademarks Help Consumers Choose the Right Medications

Once consumers find a brand name drug that works for them, they are often reluctant to change to another drug, particularly a generic version, where such is available. In some cases, the generic just does not seem to work as well, perhaps due to the particular consumer's reaction to different inactive ingredients in the new drug. For some, it can also simply be the peace of mind that comes with taking the brand name product that they are familiar with and know is made in a consistent manner that they can rely on. Either way, that comfort level would be lost if drugs were only to be identified by their generic name.

In addition, with the advent of direct-to-consumer advertising in many countries, including the United States, consumers are able to learn much more quickly about the availability of new potential treatments for their medical conditions. Such advertising would be far less effective in informing the public of innovative medications if manufacturers were forced to use only complicated, confusing generic names for their products rather than more readily remembered trademarks.

Being able to identify a drug by its trademark is also helpful to consumers in the rare event of an adverse reaction. Identifying a particular manufacturer's drug would be extremely difficult if the drug were known only by the generic name. Thus, using trademarks for pharmaceuticals allows the consumer to easily identify the source of any problems they might experience.

C. Trademarks Allow Manufacturers to Monitor their Products

The use of trademarks enhances manufacturers' ability to monitor the safety of existing drugs. Reports of adverse events that only mention the generic name of a drug would not aid manufacturers in determining whether their drugs were involved, and would result in time-consuming as well as costly investigations and safety checks that could be avoided if the particular manufacturer involved in an incident were readily identifiable, as it is when the trademark is known.

Pharmaceutical trademarks also facilitate taking legal action against counterfeits. If drugs are only marketed by their generic name, it would be difficult to know if a particular formulation is being counterfeited. Additionally, customs enforcement at country borders to stop trafficking in counterfeit products would be virtually impossible without trademark identification.

4. Conclusion

Trademarks provide the best method by which pharmaceuticals can be prescribed and prescriptions filled. Though no system is foolproof, the use of pharmaceutical trademarks, in conjunction with ongoing efforts to encourage health care providers to be mindful of look-alike/sound-alike drug names, is far more likely to minimize medication errors than any other alternative. Pharmaceutical trademarks allow health care professionals to minimize prescription errors, allow consumers to readily identify the specific medications they are taking and allow drug manufacturers to monitor their products, and to take steps to fight counterfeiting as well as providing manufacturers with the incentive to develop new drugs. Pharmaceutical trademarks, therefore, benefit the health and safety of the patient and in turn, the entire healthcare system.