

Staffing Insurance News



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Trademarks and Advertising Injury

Trademarks, intellectual property, copyright, trade dress and trade names including titles and slogans are terms we hear every day in our corporate communications. Then, insurance policies add the term 'Advertising Injury Coverage'. We have all heard and used these terms and while we are aware of the concept of these terms, how aware are we of the specifics?

A coverage found in insurance policies called Advertising Injury may provide you with some solace. Advertising Injury, while the definition may differ slightly from policy to policy, is designed to protect the insured from injury to others that is caused by the insured's advertisement. This Advertising Injury coverage includes consequential bodily injury arising out of numerous offenses. The most germane to advertising are the offenses: "the use of another's advertising idea in your advertisement" and "infringing upon another's copyright, trade dress or slogan in your advertisement". (There are other offenses that include oral or written publications that violate a person's right of privacy and invasion of a person's right of privacy, eviction, false prosecution and false arrest, but that will be the topic for another article.)

This Advertising Injury coverage will respond to suits brought for claims and pay the company that is bringing the claim against you. You must also keep in mind that this coverage is only available to protect you when the trademark/copyright infringement is arising out of your advertising. That is still only half of an advertising injury claim, because, while the company that you have injured is made whole, what about you? What will it cost you to change all your marketing materials? What will it cost you to change all your advertisements? How much lead-time will a publication give you to change your advertisement? Often, the only option with a publication is to cancel – how much business will you lose then?

How do you protect your company? It is important to recognize the difference between a liability policy, which protects you against claims from another company/person, versus a first party policy, which would pay you. The easiest example is in automobile insurance. If you hit someone, your liability coverage pays the person you hit, but liability will *not* pay for the damage to your car. You will need first party coverage, called "collision coverage", which is the most costly. First party coverage for trademark/copyright, while available in very limited markets with relatively low limits, having very high deductibles tends to be cost prohibitive. So what do you do?

The first step is to register your trademark and make sure that the attorney that handles it is a trademark/copyright attorney. When you file your trademark/copyright, do not make the mistake of only filing it in your industry. For example, if you were to file a trademark/copyright *Temps R Us*, it may actually clear the trademark/copyright office if you only file it for the Temporary Help industry, but *Toys R Us* will almost certainly bring suit against you and they will win. A savvy trademark/copyright attorney will advise you to file your trademark/copyright across all industries, then you will have a much better chance of never having to endure the arduous journey of suits and name changes, especially when your company is well-known.

Patents are a whole class by themselves and are usually tied to a product and sometimes even a service. This is very expensive litigation and not to be confused with trademarks, the topic of this article.

For more information on trademarks and advertising injury coverage, contact [World Wide Specialty Programs](#). We make it our responsibility to educate the staffing industry. If you ever have questions or concerns do not hesitate to call us at **631-390-0900**. We are proud to be an ASA Corporate Partner.



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