Keep Calm And Carry On - Don’t Panic!

22/09/2011

“Keep Calm And Carry On” was a poster produced by the British government early on during the Second World War. It was intended as an exercise in morale boosting for the British public. Seventy years on, the slogan finds itself at the centre of another battle in Europe, this time before the European Community Trade Mark office in Alicante.

In 2009, an entrepreneur by the name of Mark Coop started to produce a range of goods bearing the “Keep Calm And Carry On” slogan. Starting with t-shirts, he rapidly expanded so as to include mugs, soft furnishings, cufflinks and now even produces deck chairs and chocolate bars all bearing the same phrase. Mr Coop had the foresight to apply to register a community trade mark in a wide variety of classes. As a result, Mr Coop acquired the exclusive right to apply the slogan to the goods for which the community trade mark was registered, and used his registrations to prevent anyone else from using the slogan on various products.

It has been reported today that proceedings have been commenced in the Community Trade Mark office seeking to revoke Mr Coop’s registration. It has been suggested that “Keep Calm And Carry On” is part of Britain’s heritage, and that no one person or company should have a monopoly in using the words.

On first view, there is force in the argument. “Keep calm” and “carry on” are both everyday phrases and it would seem grossly unfair for any one person to be given the exclusive right to use either or indeed both of those phrases on merchandise. However, so is “Next”, but no-one claims “Next” is a bad trade mark; normal words and phrases applied to goods or services which they do not describe have long been accepted.

Trade mark law carves out situations where words and phrases are used to indicate the origin or a particular characteristic of a product, but unless it was actually being used on a sign (for example emergency instructions) it is hard to see how “keep calm and carry on” is descriptive of anything. Mr Coop spotted an opportunity and invested in it. Why should he not be able to protect his IP?

So the question in this case is whether the phrase “Keep Calm And Carry On” is being used as an everyday phrase, or whether it has become distinctive so as to suggest that products bearing the phrase emanate from Mark Coop and his company. Had other companies been putting the phrase on their merchandise for a number of years, then those companies would have every right to object to Mark Coop’s registration and the suggestion that going forward only he should be entitled to apply the mark to goods. But if, as it appears, Mark Coop has been the only person applying the mark to a wide range of goods for several years now, then there is every reason to argue that people will associate the phrase with Mark Coop’s company and no reason therefore to revoke the community trade mark.

If he did not have his registrations, Mr Coop could never have exploited the brand in the way he did and removed competition. This shows the importance of registering brands which are of value to a new or growing business.

Lawrence Abramson (labramson@fladgate.com) and Eddie Powell (epowell@fladgate.com), partners, Fladgate LLP