

Barber Poles and Lapel Pins: A Trademark Perspective

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Both barber poles and lapel pins can serve as examples of trademark use in connection with membership in an organization. This value is underscored by a May 2017 Wall Street Journal article (“Barber Poles Have Their Own Police Force, With Badges and Everything”) on enforcement actions by the New Hampshire Board of Barbering, Cosmetology and Esthetics to fine the unauthorized use of a barber pole by a hair salon that did not have any barbers on staff. Similar enforcement actions were undertaken in Arizona against salons for unlawful displays of barber poles or their likenesses, without a licensed barber on duty.

In essence, trademarks are symbols that tell purchasers and potential purchasers where goods or services come from – in this case, only from properly licensed barbers. As described in the article, barber poles have “source identifying” significance and their display conveys to the public the qualification of the provider to offer licensed barber services (i.e., the quality of the services offered in connection with the barber pole). The fact that state boards and trade associations are protecting the pole from misuse by those who are not properly licensed or qualified is further evidence of the pole’s value as a trademark.

Such trademarks used to convey membership in a particular community – represented by symbols only to be used by members – may be registrable in the USPTO as collective membership marks. Similarly, lapel pins showing one’s membership in a fraternal order (like fraternities, sororities, the Masons, the Daughters of the American Revolution, etc.) can also demonstrate use in commerce of a particular collective membership mark by its members and can serve as specimens of use to support such a trademark application.

If a symbol simply reflects the benefits that an organization can provide to its members, the symbol could instead be registered as a service mark associated with association services.

It is also possible that a symbol like this could serve as a certification mark, whereby the mark owner would certify that users of the mark met the appropriate qualifications and requirements in order to display it. Notably, however, a certification mark does not indicate the source of the particular goods or services, but instead that the person using the mark in connection with those goods and services meets certain qualifications. A certification mark is also not used by its owner, but instead by those who are “certified” to meet the criteria set by the owner.

In each case, the type of registration will depend on the actual manner in which the mark is used in commerce and whether the use is made by the members, by the association, or by someone who meets the certification requirements.

Note also that unregistered marks may also be protected against infringement by junior users, users who do not meet the membership criteria, or other persons who are not licensed to use the mark.

Misuse of any of these indicia of membership could lead to confusion of the relevant purchasers or the general public, and thus owners of these marks should take seriously any unauthorized uses and enforce their marks accordingly. For more, see “What do Barber Poles and Lapel Pins Have in Common?” Privacy & IP Law Blog, June 5, 2017.

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