As discussed in our previous post, for determining the well knownness of a trademark, the claimant of the well knownness is required to prove beyond reasonable doubt that the mark enjoys high reputation among a substantial segment of consumers, with respect to the goods and/or services to which said mark is applied. In order to conceptualize the principle behind the well knownness of a trademark, it is important to understand the legal interpretations of the terms ‘substantial segment of consumers’ and ‘relevant consumers’.

Although there is no hard and fast rule regarding what constitutes substantial segment of consumers, analysis of case laws of various jurisdictions indicates that, in order to consider a trademark as well known, the mark should be known among 75 to 90% of relevant public.

The Chancery Division in the judgment reported as “British Sons Vs James Robert – 1996 (RPC) 281 (page 305-306), while examining the issue of acquired distinctiveness of a descriptive trademark “TREAT” has held that mere extensive use is not enough. It must be shown that the mark has really become accepted by a substantial majority of persons as a trademark and has become a household word. Even if 60% of the purchasing public recognize the word as a trade mark, that is not sufficient. Such recognition must be amongst at least 90% of the purchasing segment of public. The Applicant has miserably failed to produce on record any such evidence.

The European Court of Justice in BOTOX Case (Joined cases T-345/08 and T-357/08) confirmed that “…the size of the market
share of BOTOX in the United Kingdom, 74.3% in 2003, like the
degree of awareness of the trademark of 75% among the
specialized public accustomed to pharmaceutical treatments
against wrinkles, is sufficient to substantiate the existence
of a considerable degree of recognition on the market.”

Therefore, an entity claiming well knownness shall prove that
its mark is known among more than 70% of the relevant public,
with the help of cogent and indisputable evidences including
but not limited to sales turnovers, sales invoices, advertisements and promotional expenses, promotional
activities and the range of business circles in which the
products under the said mark are actually circulated.

The term “relevant public” indicated herein does not mean that
the public at large should be aware of the usage of the mark.
Instead, the person claiming well knownness should prove
beyond doubt that the mark is known among the consumers and
business circles of the goods and services to which the mark
is applied. For example, for the mark HEDGE to claim the “well
known” status among security investors, they are not required
to prove that the mark is well known among the public at
large. On the contrary, they have to prove that they have a
renowned reputation among investment bankers.

In our next posts, we would be discussing other factors
involved in determining well knownness of a trademark.