

Brand Ambassador

Trademark basics every entrepreneur should know.

BY MEGAN MYERS

If you are in the process of starting a new business, you undoubtedly have a lot on your mind. Among the things you're likely mulling over is what to call your company, what logo to use, and how to keep others from copying these ideas. This is where intellectual property law comes in to cover trademarks like business and product names and logos.

What Is a Trademark?

A trademark is anything that identifies and distinguishes your goods and services. It is how consumers know that what you are selling comes from you and not from a competitor. In the U.S., you obtain rights in a trademark simply from using it. A trademark is different from a patent, which covers inventions, or a copyright, which protects original artistic or literary works. A business will likely use several trademarks. A registered business name is the name under which you do business in a particular state and is typically registered with a secretary of state's office. A domain name is a Web address. While these are often related to trademarks, they are distinct and represent different rights.

Selecting Your Mark

Be original. You should avoid a mark that would be considered "confusingly similar" to someone else's mark, based on sight, sound, meaning, commercial impression, and the relatedness of the goods/services. If you use a mark that is too close to someone else's, you could be sued for trademark infringement and forced to change your mark.

Choose a "strong" mark. You also want to make sure that your mark is actually entitled to trademark protec-

tion so that it can be registered and you can enforce your rights against third parties. Generic terms, such as "Bicycle" for a store selling bicycles, cannot be protected. Descriptive marks, such as "Vision Center" for an optics store, tend to be popular because they immediately convey to consumers something about a company's goods and services, but they are typically hard to protect. Suggestive marks are easier to protect, because they require some additional thought to reach a conclusion about the goods/services, but there is a fine line between suggestive and descriptive marks. For a strong mark, try to choose one that is fanciful (an invented term, such as "Kodak") or arbitrary (a real word that is applied to unrelated goods and services, such as "Apple" for computers).

Perform a trademark clearance search. Before choosing a mark, it is highly advisable to perform a trademark clearance search to make sure that your mark is available. A trademark attorney can do this and can give you a legal opinion on the risk from using a mark, as well as the likelihood of obtaining a registration for your mark. To minimize costs, you can perform some preliminary searching yourself. A simple keyword query in your favorite online search engine can be effective, as well as using the U.S. Patent and Trademark Office's free database of federal applications and registrations, available at uspto.gov/trademark.

Protect Your Mark

Apply for a federal trademark registration. Obtaining a federal registration from the USPTO is not required in order to use your mark in the United States, but there are numerous benefits to doing

so, including the presumption of validity and nationwide exclusive rights to use your mark in connection with the goods and services covered by your registration, the ability to use the ® symbol, and the ability to put third parties on notice of your trademark rights. Although trademark rights in the United States come from use of your mark in commerce rather than registration, these "common-law" rights are typically limited to the geographic area in which you're using the mark, in contrast to the nationwide rights granted by a registration.

Think global. If you're planning to expand your business abroad, consider filing trademark applications in other countries. Each country has its own intellectual property system with its own distinct rules.

Police your mark. In the trademark world, "policing" means enforcing your rights in your trademark against third parties using the mark without your permission. If you don't take efforts to ensure that your trademark remains a reliable symbol for your goods and services, you risk possible loss of your rights.

Set your business up for success by investing time and money in your brand at the outset. **TBJ**



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