

From the Intellectual Property Group

Keep the integrity of your company's brand intact by trademarking your company's name, logo or tag line. To find out more, read the FAQs.

What is a trademark?

Trademarks enable the public to identify the source of goods or services. A trademark can be a word, picture, symbol, or other distinguishing mark, or even a sound or smell. These are the brand names of our favorite products. These brands allow us to identify competing products by quickly looking at their marks. Examples of Trademarks: the word APPLE for computers, McDonald's double arches, and the Coca Cola bottle.

What is the purpose of a trademark?

Trademarks indicate the origin of a product and benefit both businesses and individuals. Trademarks allow businesses to build an identity and reputation with customers, and thereby grow or expand. Likewise, trademarks help consumers by giving them assurance of a consistent level of quality every time they buy a particular product bearing a specific brand.

What can be trademarked?

A trademark is any "thing" that helps a consumer distinguish between one company's products or services from another company's products or services. This "thing" can be a word, logo, phrase, symbol, or tag line so long as it is used to identify a good or service as coming from a particular source, i.e. your company. Product configuration (or "trade dress"), such as the distinctive shape of a COCA COLA® bottle; a sound, like the well-known NBC® chimes; a scent; and a color may also serve as a trademarks.

What is the difference between trade names and trademarks?

A trade name is the official name under which a company does business. A trademark is used to identify and distinguish a company's products or services in the marketplace. Not every trade name (or business name) may be trademarked. You should trademark your trade name only if you use it in commerce to advertise, promote or identify the source of goods or services your company produces. For example, McDonald's is both a trade name (a Delaware corporation called "McDonald's") and a trademark (because MCDONALD'S® puts its name on its products and services to identify it as the source). On the other hand, TJ MAXX® is a trademark for retail department stores services, but is not a trade name because the actual name of the company is TJX Operating Companies, Inc.

How do I select the right trademark for my company?

The strength of a mark is a good predictor of the long term value of the mark and the cost of defending it. Given the initial investment it takes to build a company brand and to implement a marketing and trademark protection strategy, it is expensive to make a mistake. Thus, the selection of a particular mark that will function as a trademark or a service mark is very important. When you are selecting a mark, you should consider choosing one that will provide the most legal strength for your business. A trademark that is overly descriptive of goods or services may be weak, difficult to register, and difficult to enforce. And a trademark that is too similar to others' prior marks could result in litigation. Companies should select marks that will be strong, registerable, and enforceable, and that will avoid disputes with other trademark owners.

For more information regarding selecting a strong mark, see the [Selecting a Strong Trademark FAQ](#).

Should a company care about trademarks?

A trademark often represents the entire goodwill of a company. Too often growing companies opt not to protect the brand they are building due to tight budgets. However, establishing a strong brand is pivotal to business success and protecting that brand is equally important. Therefore, securing your brand is the first and most important investment of startup companies.

Companies should focus on trademark protection to ensure they have an adequate trademark program before commercial sales begin. It is also wise for companies to review their branding and marketing plans with trademark counsel.

Can two companies use the same trademark?

Yes. Trademark rights are limited to particular goods and services, so companies that are in different businesses can generally use the same trademark simultaneously provided that there is no danger of creating consumer confusion. For example, many companies own federal registrations for the mark TARGET for different goods and services such as a retail store, health care services, publications, skin treatments, weight maintenance programs, and dishwashers.

Be careful that you aren't choosing a mark that is well-known or famous. Owners of "famous" trademarks may be able to prevent others from using their marks on completely different goods and services if the other's use of the mark dilutes the distinctive quality of the famous mark. McMOTEL, NIKE® televisions, and NICKELODEON® bowling balls are all examples of trademark uses that would likely be prevented by the federal anti-dilution law.

How are trademark rights obtained?

In the United States, common law trademark rights arise on first use within a product category or geographic market. This means that if you start selling products or services under your preferred trademark now, you can claim ownership of that trademark without formally registering it in your state (state registration) or with the United States Patent and Trademark Office (federal registration).

What is the difference between Federal, State and Common Law trademarks?

A trademark can be protected by state, federal and common law simultaneously. State and federal marks are always common law marks because common law trademarks originate immediately upon using a symbol in connection with the sale of goods or services. However, protection under common law is limited, so many trademark owners will benefit from registering their marks with the state or federal government (both domestically and internationally).

Should I register my trademark?

You can acquire rights in a trademark by using it, not by registering it. However, registration enhances the rights already granted by virtue of using the mark. The benefits of federal registration of your trademark with the United States Patent and Trademark Office (USPTO) are:

- Public notice of your claim of ownership of the mark;
- A legal presumption of your ownership of the mark and your exclusive right to use the mark nationwide on or in connection with the goods/services listed in the registration;
- The ability to bring an action concerning the mark in federal court;
- The use of the U.S. registration as a basis to obtain registration in foreign countries;
- The ability to record the U.S. registration with the U.S. Customs and Border Protection (CBP) Service to prevent importation of infringing foreign goods;
- The right to use the federal registration symbol ®; and
- Listing in the USPTO's online databases.

IP: Protecting Your Brand Through Trademarks

Just the FAQs

A trademark can also be protected by state registrations which can be registered simultaneously with federal registration. However, the benefits of registering a mark federally are far greater than those offered under state registrations. Also, the process for registering a mark federally is more extensive, rigorous and time-consuming than it is for state registrations. Some companies may find they are sufficiently served with a state trademark registration if they operate solely within one state and have no plans for expansion.

Does a U.S. trademark registration protect a trademark in a foreign country?

No. Trademarks are territorial and must be filed in each country where protection is sought.

How can my company protect its trademark rights?

Along with registering the trademark, a company should consider the following to protect its trademark rights:

- Use your trademark. Trademark rights can be lost when the owner stops using the mark. It is important to continue using your mark and only for what it was originally trademarked for.
- Protect your trademark from use by others. This is where registering comes in handy.
- Show that you have a trademark by using the “TM” or “SM” designations or ® symbol.
- Never use your trademark as a noun standing alone. The generic term for your product or service should be used after your trademark; e.g. LG® televisions, GRACO® cribs.
- Never use your trademark as a verb. You do not “google the address,” instead you use the GOOGLE® search engine to look up the address.
- Display your trademark in a stylized logo, capitalized or bolded format to further distinguish it.
- Be alert for improper use of your trademark and let your counsel know right away about any possible infringement—if you do not take prompt action, you may lose your rights.

What do “TM,” “SM,” and ® mean and how do I use them?

Any time you claim rights in a trademark and you haven’t federally registered it, you may use the “TM” (trademark) or “SM” (service mark) designation to alert the public to your claim.

The ® is the federal registration symbol, and may only be used once the mark is actually registered in the U.S. Patent and Trademark Office. Even if an application is pending, the registration symbol cannot be used before the mark has actually become registered. The federal registration symbol should only be used on goods or services that are the subject of the federal trademark registration.

Either symbols are indicated by a raised superscript to the right of the trademark, e.g. SHINE DOWN ON ME™ or SHINE DOWN ON ME®.

**To learn more, contact our
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