

## ***What is a Trademark?***

A trademark is any word, name, symbol, or design, or any combination thereof, used in commerce to identify and distinguish the goods of one manufacturer or seller from those of another and to indicate the source of the goods. Trademarks are generally words, phrases, logos and symbols used by producers to identify their goods. However, shapes, sounds, fragrances and colors may also be registered as trademarks. In recent years, trademark law has expanded to include some very creative things that identify a brand. Generally, almost any word, name, symbol, or device capable of distinguishing the source of goods may be used as a trademark subject to few limitations. Therefore, for businesses it becomes key to use trademarks to successfully promote their brand.

## ***Do I have Register my Trademark?***

No. Once you create a mark and begin using it there is no necessary requirement to register the mark. However, registering a mark has several advantages. It entitles the owner of the mark to make better claims to ownership of the mark, obtain higher damages against infringing uses, and provides increased asset value as an intellectual property owned by the business. It is important to make a distinction here: the <sup>TM</sup> symbol can be used at any time to indicate to other's that you are claiming the word, name, symbol, or design as your trademark, as it is for unregistered marks. However, to use the ® it requires you to register your mark with the United States Patent and Trademark Office (USPTO). Registering with the USPTO confers many benefits, but there are downsides. First, the process is lengthy and expensive and may be prone to litigation, as another company will oppose the filing of your mark. In addition, the USPTO may reject your mark for protection due to its usage or for other reasons. That being said, in many of those situations your mark still would not be protected even without registration if there was a lawsuit, as opposing party might still have a better claim against your mark.

## ***What is the Process of Registering Your Trademark?***

The process requires filling out extensive forms and filing them with the USPTO. This begins the application process and the mark then must undergo review by an examining attorney at the USPTO. The attorney then searches databases to see if there are similar marks in existence, which would deny your registration. In addition, things like common phrases, functionality, etc . . . may also cause an application to be rejected. Even if, the mark is acceptable to the attorney, the mark may still be contested. Next, the USPTO publishes all marks that examining attorneys see no problems with in a weekly Official Gazette. This publication allows other businesses to see ALL the marks seeking to be registered. Basically, this is public notice and allows others to come forward to protect their own marks due to potential brand dilution or confusion. If an opposition is filed against your mark a trial commences to determine whether or not the registering mark is distinct from the opposer. These trials can be expensive. Sometimes the opposer and filer will try to negotiate a settlement to deal with the dispute. If there is no opposer or the opposer agrees to drop the suit the mark shall be registered. This process can be over a year.

## **Further Considerations**

The process above discusses only federal filing. You may also consider filing your trademark locally. While this filing does not operate similarly as the USPTO method it may confer certain protection that you may want to consider. Finally, determining when to file and researching similar competing or confusing marks in this global Internet age is a must for any business wishing to protect its brand and registering its own trademark.

***Contact me and we can ID key business brand that might require protection through the registration of a trademark, writing a cease and desist letter, or a licensing agreement.***