

Taking Care of Business

What Is A Trademark and Do You Have One?

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(Remember -- this article should be considered general advice and is NOT intended to be a substitute for the advice of competent legal counsel.)

As small business owner, there are some legal considerations a new business (and even an old business) cannot afford to overlook. An important area is the protection of intellectual property.

Although trademarks, copyrights, and patents all concern intangible property rights and overlap to some extent, they differ from each other significantly. If you know the attributes of each, you can take full advantage of them and enhance the value of your company. The failure to get appropriate protection is an invitation to pirate. In general, each area can be described as follows: **Trademarks** protect source identifications or marks of trade; **Copyrights** protect original literary and artistic expressions; and **Patents** protect new and useful inventions.

What is a trademark? A trademark is a word, logo, or package design, or a combination of them, used by a manufacturer or merchant to identify its goods or services and distinguish them from others. Trademarks include **brand names** identifying goods (Dole for canned pineapple); **trade dress** consisting of the graphics, color, or shape of goods or packaging (Coca-Cola Bottle for a soft drink); **service marks** identifying services (McDonald's for restaurant services); **certification marks** identifying goods or services meeting specified qualifications (Woolmark for apparel made of 100% wool); and **collective marks** identifying goods, services or members of a collective organization (National

Cheerleaders Association for cheerleading squads). The same legal principles generally apply to all these terms, often simply called "marks."

No one would consider buying a business without conducting the proper due diligence on it. Yet many business owners, when they set up their businesses, do not pay attention to their own trademark due diligence. It happens quite frequently: a new business starts without giving any consideration to their brand or trademarks. In the beginning this is typically not an issue, but as the business grows and more money is spent on advertising, marketing, and branding, the business is noticed by competitors. If a proper clearance search wasn't done and there is someone out there already using the mark, tagline, or brand, the business may receive a Cease & Desist letter from a firm ready to initiate an infringement action.

If you intend to use your business name as a trademark, or any other mark or tagline that identifies your goods or services, it is important that you have that name searched and cleared. Once cleared for use, trademark rights attach simply by using the mark in the sale or advertising of services in the geographic area of use. However, a wise business owner files for federal trademark protection before making a significant investment in branding. A federal registration provides nationwide priority trademark rights from the filing date.

Reserving a corporate name is irrelevant to trademark rights. Protecting your trademarks should be done correctly by a knowledgeable professional and does not have to break the bank. It should be included in your budget and not overlooked. In the next issue of the newsletter, we will discuss copyrights and patents.