

What's in a Name: Protect your company's brand

Make your mark in multiple ways to establish ownership

BY AMMON J. FORD



Every business needs a name. In fact, most businesses have several.

The legal name often lurks in the background and most consumers never see it, while trademarks, trade names and domain names are generally the most visible and important client-facing identifiers. Knowing the differences between them will help executives protect their brand and communicate with their target markets.

TRADEMARKS

A trademark refers to the words, symbols, images, smells or colors that consumers use to identify the source of products or services. The most common types of trademarks are words or logos, but a trademark can be any design feature that consumers see as a source identifier. Consider the red sole on every Louboutin shoe, the dripping red wax on every bottle of Maker's Mark whiskey or the distinct scent of Chanel No. 5 — each is a federally registered trademark. Any consumer “in the know” could identify these brands using only these sensory features, even if they do not remember the name.

A trademark's legal power flows from its use on the products or services in commerce. Registration is not required for ownership, but it will help prove ownership in court when necessary. One likely reason your trademark might end up in court is to prevent a competitor from using the same or similar trademark in a way that is likely to confuse consumers, known as trademark infringement. A federal registration provides national protection. Unregistered trademarks can only claim protection in their current markets.

Only the trademark owner can enforce their exclusive rights. Individual states and the federal governments both register trademarks, but they do not police or enforce

those rights. Trademark registrations are valuable as conclusive evidence of their validity and ownership — two factors that must be proven in any infringement lawsuit.

Many people misunderstand the trademark symbols: TM and ®. Anyone can use TM (short for “trademark”) on any mark they are holding out as a trademark — no registration required. The ® symbol, however, indicates a federally registered mark.

TRADE NAMES

A trade name, also called a “dba,” is little more than a way to refer to the business that is different than the legal name. Many states require companies to register their trade names and will not register the same name for two different companies. However, a registered trade name offers no brand protection. Competitors might be able to use similar names so long as they can demonstrate a good faith mistake or difference. Registered or unregistered, a trade name alone is not protection for your brand.

Trade names can be useful for marketing and promotional materials, as well as more formal documents such as receipts or invoices. Checks can even be made payable to a dba without causing problems at the bank.

DOMAIN NAMES

Similarly, a domain name, such as www.gleamlaw.com, is simply a website address — a piece of digital real estate. Anyone can purchase nearly any available domain name, regardless of how similar it might be to a trademark. How it can be used is a trickier question.

Owning the domain is not the same as owning the trademark. Domain registration gives you control over that cyber-property and little else. A site owner need not be the trademark owner.

Cybersquatting is a big problem. This is when someone buys domain names simply to prevent competitors from using them or

to later sell them to the trademark owners. If the domain is too similar to a valid trademark then the trademark owner may sue for control of the domain under the federal Anticybersquatting Consumer Protection Act of 1999, but winning control over a domain is not a simple task.

To gain control of the domain you would need to prove a “bad faith intent to profit from” your protected trademark. Proving the intent inside someone's mind can be very hard — and expensive. That leaves many businesses struggling with the difficult choice to either buy off the squatter or duke it out in court for months or even years.

PROTECTING CANNABIS BRANDS

A good trade or domain name is a useful business tool that might drive sales, but they're not adequate replacements for a trademark. A trademark registration is a company asset with real-world value that can be bought, sold and licensed to others. It can also be used to protect your brand's reputation and value in the market.

Because cannabis is still illegal under federal law, the U.S. Patent and Trademark Office regularly refuses to register the industry's trademarks. This is a difficult hurdle and has led many to believe that cannabis businesses simply are not eligible for trademark protection. That is incorrect. Cannabis businesses can obtain trademark protection for marks that are used in ways that are compliant with federal law.

Cannabis businesses, especially those in states that only recently legalized sales, should move quickly to secure their national branding and intellectual property rights. Washington, Colorado and the oldest medical marijuana markets have a head start in buying up domain names and registering federal trademarks.

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