

Protecting Your Valuable Brand: The Importance of Trademarks

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As an Internet marketer, you know the importance of developing brand recognition. The brand is usually part of a company's web site address. It is often entered into search engines to find a company, its products and services. Since the brand is vital to how a company's consumer traffic is generated on the Internet, what should a company do to protect its brand? One of the simplest and best things to do is to use and register your brand as a trademark.

In the U.S., the process for registering a trademark begins with the filing of an application for the mark and the associated goods and/or services with the United States Patent & Trademark Office. The application is examined and assuming no issues approved for publication. The application is then published, allowing time for third parties to object to the registration. Again, assuming no objections, if the mark is in use and a declaration of use has been filed and accepted, a Certificate of Registration is issued. Once a registration is issued, the registrant obtains additional rights in its mark for the goods or services identified in the registration certificate. These additional rights increase the registrant's ability to deter and/or prevent others from using the mark – which is really what protection is all about.

A trademark owner only has rights in its mark in the areas of the country in which it has used its mark or has an established reputation. Federal registration grants nationwide rights, subject to a limited defense for a user in good faith who can establish use prior to the complaining party's application filing date. Thus, a registrant has the ability to stop subsequent users of its mark throughout the United States, provided it can establish a likelihood of confusion.

By obtaining a federal registration, a registrant also increases the mechanisms for deterrence against an unauthorized use. First, a registrant is able to use the ® symbol in association with the mark. Use of the ® symbol is in some cases enough to prevent a would-be infringer. Second, as part of the registration process, an applied for mark is compared with already existing registrations and pending applications, and if the applied for mark is likely to cause confusion with an already existing registration, registration of the applied for mark will be refused, which often causes the applicant to decide not to use the applied for mark. Third, a clearance search is often conducted when companies are developing new brands to find bars to use of the proposed mark. A federal registration shows up on such a search, often causing a mark confusingly similar to registrant's mark to not be chosen. Fourth, if improper use of the mark in a domain name or on a social media site occurs, a federal registration enables the registrant to prove its rights in the mark under the ICANN Uniform Domain Dispute Resolution Policy to stop cyber squatters and under the various social media site policies to stop misuse of the mark. Lastly, a registrant can register its mark registered on the Principal Register with the U.S. Customs Service and have the Service assist in stopping counterfeit goods from entering the United States.

A registrant may also be able to claim the U.S. filing date as a priority date for applications filed in foreign jurisdictions if such applications are filed within six months of the U.S. filing date. Trademark rights are geographically based. In many countries, unlike the United States, trademark rights are only created upon registration of the trademark. The earlier priority dates can often make a difference in obtaining the foreign registration and the resulting trademark rights in a foreign country, an important benefit in the increasingly global marketplace.

Obtaining a federal registration also gives the registrant the automatic right to sue in U.S. federal courts for unauthorized use of the mark and certain evidentiary presumptions which ease registrant's burden in litigation. A registrant can also make an elective filing after five years of continuous use after registration which limits the grounds of challenge to its mark. These rights may only be needed when faced with litigation, but if litigation does arise, having these rights helps the registrant protect its brand in the litigation.

These rights obtained upon federal registration are why registering a trademark assists a company in protecting its brand. Isn't your brand worth it?