

Trademark 101 Part 1: Trademark Basics

What is a trademark?

A trademark is anything that identifies and distinguishes the provider of the goods or services with which it is used from the provider of other, similar goods/services, such as a word, phrase, symbol, design, and even colors (think UPS brown). Think of a trademark as a “brand:” it tells consumers that the goods or services they are purchasing come from the same source as the last goods/services they purchased showing the same mark and thus they can expect similar quality as other items offered under that same mark.

What is a service mark?

A service mark is a trademark that is used for services as opposed to tangible goods. It's confusing, but sometimes people use “trademark” to mean a trademark used on tangible goods, and sometimes as an umbrella term for any kind of trademark, whether it's used with tangible goods or with services.

Is my business name a trademark?

A business name, or “trade name,” is simply the name of your company, partnership, sole proprietorship, or other entity. Sometimes, the words making up a business name are also used as a trademark (*i.e.*, brand), which leads to some confusion. Even if the words are exactly the same, legally, a business name and a trademark are completely different. When used as brand, it's a trademark; when referring to the business itself, it's just a business name.

Business names and assumed names (d/b/a's) should be registered with the state in which the business was formed; this system is entirely separate from trademark law and registration.

What's the difference between a trademark and a copyright or a patent?

These are all types of “intellectual property.” Each protects a different thing, and the law is different for each. Sometimes, they overlap; for example, a logo may be protected as a trademark and by copyright, and software may be protected by both copyright and patent.

Here are the basic differences:

- Trademark protects brands.
- Copyright protects original creative expressions, such as books, artwork, and music.

- Patent protects novel, “non-obvious,” and useful inventions, such as a machine, formula, or process.
- Trade Secret protects information that is kept secret from the public, like the recipes for Coca Cola and Pepsi.

How do I trademark something?

You accrue trademark rights in your brand simply by using it, even if you don’t register the trademark. Unregistered rights are called “common law” rights, and they are limited to the geographic area in which the trademark is actually being used. [Registering your trademark significantly expands your rights.](#)

What do ™, SM, and ® mean?

™ indicates use as a trademark on tangible goods. It is usually used with unregistered trademarks.

SM stands for Service Mark and indicates use as a trademark for services. It is usually used with unregistered service marks.

® signifies that the trademark is registered with the U.S. Patent & Trademark Office.

Why should I register my trademarks?

[Registering a trademark](#) expands and strengthens your rights in your trademark. If you rely on your “common law” rights (acquired through use but not registration), those rights will be geographically limited to the area in which you have actually used the trademark, such as a single town.

If you are using your trademark only within one state, you can apply to register it with that state. If you are using your trademark across state lines (in “interstate commerce”), you should register it with the U.S. Patent & Trademark Office, which gives you stronger and broader rights than even multiple state registrations.

What benefits do I get from registration?

When you register your trademark with the U.S. Patent & Trademark Office (“PTO”), you obtain the rights to use your trademark across the entire U.S, with carve-outs for any pre-existing conflicting common-law uses (uses of unregistered trademarks). Registration also enhances your ability to protect your trademark against infringements and, in some cases, entitles you to greater damages and attorneys’ fees.

What is trademark infringement?

Trademark infringement occurs when, regardless of their intentions, someone uses a mark in a way that is likely to cause consumers to mistakenly believe that their good/service comes from or is somehow associated with those of an owner of another mark. Determining whether a “likelihood of confusion” exists is based on both the similarity of the marks and the similarity of the goods. The more similar the two marks, the less similar the goods/services need to be in order to find a likelihood of confusion and thus infringement, and vice versa.

Examples of trademark infringement include:



3M trademark and products



3N trademark and products



On the other hand, even the exact same trademark can be used on completely different products, such as DOVE for soap and DOVE for chocolate, because consumers aren't likely to think that the soap maker also makes the chocolate or is otherwise connected with the chocolatier.

How do I know I'm not infringing someone else's trademark?

Many people search google for the trademark they wish to use and when they don't find an exact match, assume they can legally use the mark. Unfortunately, assessing the likelihood that

your trademark is infringing, or would infringe, someone else's is not that simple. For one thing, a trademark that is similar but **not the same** as another could infringe that other trademark.

Our law firm conducts "availability" (or "clearance") searches to determine whether any trademarks currently in use are likely to conflict with your trademark (although they cannot guarantee availability).

We strongly recommend ordering a search **before you begin using a trademark**, or, if you're already using it, before you file an application to register. This can avoid wasting a lot of money, time, and energy on developing and building a reputation around a mark that you'll ultimately have to change.

Additional Information

For additional information about trademarks, see the following the U.S. Patent & Trademark Office's [Trademark Basics](#). This resource provides a great introduction to trademarks, including how to [select a mark](#) and information about the registration process and includes a series of instructional videos titled *Basic Facts About Trademarks: What Every Small Business Should Know Now, Not Later*.