

# **Trademarking**

**101:**

**Everything You Need  
To Know To  
Trademark Your  
Product And Services**

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# Introduction

A trademark is your identity. If you are a business owner, new or old, you need to have the ability to be distinguished from other businesses that may offer something similar to your own.

Take for example, the number of hamburger locations in your own city. If you didn't know the trademarks of the "arches" or the "king" then you wouldn't be able to identify their products as easily. You can easily picture these in your mind, and that's what you want to accomplish for others when it comes to your own business.

Through trademarking, you can successfully get your business on the map. You create a way for others to affiliate your business with the product that they need, want or that they will need and want.

The process can be long and drawn out. Often, you need a legal professional to walk you through the entire thing. The good news is that you can do this successfully when you understand the process. That's what we'll educate you with here.

# **Chapter 1: Trademarking: What's That Mean?**

In order to trademark your business, you need to fully understand the process of trademarking. Much of this process will need you to understand your product as well as understand the legal aspects of trademarking.

Throughout this ebook we will show you and explain to you each step of the process. We'll give you some excellent ideas to help you to get started. Most importantly, you'll have everything that you need to know, starting with learning what trademarking is and what it does for your business.

## ***What Is A Trademark?***

A trademark is a distinctive signature, sign or saying that in some way depicts a specific company. It is used to identify a product, a service, or an event for a specific organization. It is used to help that organization stand out from others.

In legal terms, a trademark is also a type of industry property of that organization that can not be used by any

other organization for their needs. Legally, this would be a violation of trademark law.

Usually, a trademark is a symbol, a logo, or some type of design that is used in some way by the organization. It can be an image, a phrase, or just a single word. Sometimes it is a combination of these things, such as in a company name's design.

In some cases a trademark can even be something that is used to help a person to stand out. You could easily see this in some celebrities. Who can forget Elvis's hair? Other celebrities have used trademarks to help them to stand out as well.

In short, a trademark is a brand name because it helps to identify your product with your name. While people don't remember names well, most will remember symbols especially when they are designed in such a way as to create a memorable image! That's something you'll want to insure your trademark does.

According to the United States Patent Trademark Office, a service mark is, "A service mark is any work, name, symbol, device, or any combination, used, or intended to be used, in commerce, to identify and distinguish the services of one provider from the services provided by others, and to

indicate the source of the services.” From this, you can clearly see what a service mark can mean to your business.

This is in comparison to a trademark, which is defined by the United States Patent Trade Office as, “a trademark includes any word, name, symbol, or device, or any combination used, or intended to be used, in commerce to identify and distinguish the goods of one manufacturer or seller from the goods manufactured or sold by others, and to indicate the source of the goods. In short, a trademark is a brand name.”

Why give you these definitions used by the USPTO? It’s simple. These are the legalities of the process. You need to understand that a trademark is something that you own, not something that can be shared with other businesses or even borrowed because you think it fits your business better than the owners.

As you will see later in this book, the legality of the trademark has caused countless companies to be fined, sued and in turn to lose not only their trademark but also their funds from it. Therefore, when considering a trademark or service mark, you need to clearly understand the legalities that are defined in these statements by the United States’ governing body.



## ***Trademark Rights***

A trademark does come with rights. If you are going to be using a good trademark, you don't want others to take that trademark from your hands and to profit from it.

Trademarks do come with rights.

The main right of a trademark is that they can not be used by others to help sell their product. In some cases, trademarks that are similar can often be confusing so a trademark's rights also protect you from someone that has something that is similar to your own.

Don't be confused, though. A trademark does not prevent someone from making a product or offering a product that is similar to your own. This is considered a patent. Even those that offer services that are like your own with a clearly different mark are not infringing on your trademark rights as owner.

## ***Tell The World About Yours***

So, how do you tell the world that you have the rights to this trademark?

In the next chapters we will go into more detail on this but a trademark will need to be registered to tell others that it is yours.

This is commonly done with those trademarks that will be used for both interstate and foreign commerce. You will register them with the United States Patent Trade Office. The process of doing so is rather straight forward. The hardest part is coming up with your own trademark to have registered!

Once you have registered your trademark you can forget about it, right?

That's not completely true. The fact is that your rights for that trademark will go on indefinitely as long as you do a few things. Most federally registered trademarks, such as those registered with the United States Patent Trade Office are going to last you as long as you continue to use them in relation to your goods and services.

You'll also need to have all of the necessary documentation filed with the USPTO at the right time to make this happen. You'll need to file two things.

1. Affidavits of Continued Use or Excusable Nonuse under 15 U.S.C.
2. An application for renewal under 15 U.S.C.

For your use later, you can find these forms right on the website of the USPTO to use. But, remember this is only the steps for renewing your application for trademark rights, not to establish them in the first place!

## ***Defining Trademarking***

You can clearly see what a trademark is and how the process works. But, what is trademarking? Trademarking is the process of establishing your trademark, which we'll teach you here.

The process of doing this is a bit more complex than just determining what your product is, what's a good way to show it off and then signing on the dotted line.

Remember, your trademark defines you and therefore the process of creating a trademark is one that has to be unique and somehow significant to your concept, product or service. An effective trademarking process helps to identify the right trademark for your business.

## Chapter 2: The Benefits Of Trademarking

It seems like a lot of work to trademark a business or a product, doesn't it? For many people it can be somewhat of a challenge. For others, especially large companies, the process is simply handed over to their attorneys to go through.

Even though it may take some time to develop the perfect trademark and to put it in place, the benefits of having one are quite amazing. In fact, an effective trademark can actually stand out as its own advertisement for your business!

Just think of those arches. Think about the Wendy's girl. You can even picture your favorite Staples logo, can't you? Just seeing those symbols triggers an instant thought about visiting those locations. You don't have to be hungry and you definitely don't have to need staples and pens to want to visit those locations.

In effect, you want to create this same type of trademark for your business so that you can benefit from increased

advertisement and name recognition just through your trademark.

There are additional benefits to registering your trademark too. Remember this isn't just about creating a great logo, but registering it! The benefits of registering your trademark are many. Here are just a few of the reasons why you can't forget this step.

### ***It Provides Protection***

When you register a trademark, you get protections that come with it. For example, consider these benefits to registering your trademark for its protection benefits that you'll get:

1. You get to protect the company's name and logo. That's your most valuable asset when it comes to your business.
2. You will get the ability to use that trademark around the country as the owner of it. Nationwide ownership is yours when you register the trademark.
3. When you register your trademark, you also help to protect yourself. If someone or another company says that you are using a trademark in some way that

infringes on their trademark, they are less likely to be successful in suing you for it if you have it registered federally.

4. In the same boat, if a company comes along with developing another trademark that is just like yours or is similar to yours they can not do this, or at least they can not register it. Once the trademark is registered to you, it is yours. They also can't claim that they didn't know because it is registered.
5. In addition to this, a foreign registration provides the same protection. When you register in the United States, you will have more opportunity and a good basis for registering the trademark on an international level as well.

When you register a trademark, you are given the future rights to that mark and also to make the mark "incontestable" which is evidence that makes the mark valid. It provides you and only you with the legal and exclusive right to that mark.

As you can see, there are several protections that come from registering your trademark. The process is not that difficult and this benefit alone is enough to push anyone over the edge of not doing so.

## ***Detering Others***

Another benefit to having your trademark registered is that others will not be able to use your trademark. It is a deterrent to use it even so.

You will be able to have a small "tm" placed after your logo or design to signify that this is your trademark and that others can not use it.

One claim that many try to use is that of an innocent, "I didn't know" defense. When a "tm" is placed after your mark, though, this is impossible for anyone to use as a defense to using your mark.

When someone designs and tries to register your trademark (or one that is similar to yours) he or she will need to perform a search. When this happens, if you have registered your trademark your trademark will appear there and will help to discourage them from using it. It helps to keep them from registering something that is similar to your own as well.

In addition to this, as another deterrent, the United States Patent and Trademark Office will also not allow anyone to register a trademark that is yours or is very similar to yours.

If they determine that the trademark would be confusing or that it is too similar to your own, then they will not allow it to be registered therefore deterring others from trying to claim it as their own.

### ***You Get Great Recourse***

Although providing for protection and for deterrence are some of the best things that you'll get for registering your trademark, there is more that you'll gain, too. That comes in the way of recourse should anyone actually try to use your trademark for their own benefit. Here are some of those methods available to you.

1. When you register your trademark federally, you have the right to actually get back some three times the damage and fees of your lawyer from the person or company that used your trademark.
2. With that comes the protection that since you hold the trademark registration that your claim is valid therefore allowing for no confusion about who should benefit from that trademark.
3. If there is a company or person that comes along that tries to use your trademark for their internet domain name or otherwise, you have the legal right to it and



therefore have additional abilities to benefit from a dispute should you file one.

4. In that, you have the automatic right to sue someone that has used and/or profited from your trademark and you will do this in a federal court.

With these three elements, protection, deterrence and legal recourse, there is no reason not to register your trademark for your own business.

Having a trademark is one of the best things that you can do for your business. In addition to these things, remember these two fundamental reasons why you simply must register your trademark.

### **You Won't Be Sued**

By having and registering your trademark, you prevent yourself from being sued. This is the best reason for you to obtain that trademark. To obtain your trademark, a thorough search must be done. That means that ultimately you will have searched to insure your trademark does not infringe on anyone else's.

This protects you from being sued down the line. Even if someone were to claim that their trademark was around

before yours, since your trademark has been registered, it holds more ground.

This protection is unlike virtually any other. Since there is so much competition, especially in internet sales, the protection that a registered trademark has is something you don't want to do without.

## **Strong Brand**

As we mentioned, having a good trademark sets you apart. In keeping with our example, how many no name restaurants are out there that have no trademark that you know of? Perhaps you can't recall any right now?

Having a good, strong brand name creates for you a marketing basis that ends up setting you apart from the other guy, something that is vitally important in the business world, especially in the day and age of the internet.

The internet is very competitive and it continues to increase in this manner, too. That means that consumers have plenty of choices. There is no guarantee that they will remember who they bought from unless something strikes them or jogs their memory. One of the best tools for doing that is a trademark.

Now that you understand the benefits of having a trademark, is there any reason you don't know why you should have one?

For most businesses, the hardest part of having a trademark is to not know how to get one. Although there are some complicated parts to the process, there is help out there.

One of the best tools that you have, in fact, is the internet which is full of excellent resources and services offered by various providers that can help you to perform trademark searches and even do the entire trademarking process for you.

Before you begin to look into them, take the time to understand a bit more about the process and the reasoning behind a trademark. As you will see there are many ways that you can benefit from this process. Now, learn how to make it even more enticing for your needs.

Your business needs a trademark. So, what's the next or first step?

## **Chapter 3: Making Your Trademark Unique**

The key to a successful trademark is making it unique. In some fashion, you need to have a trademark that will stand apart from all others. You also need to have a trademark that will somehow jog the memory of those that see it so that they can know it.

This is a complex consideration. For some, it means hiring a professional to design the trademark. Yet, you should also understand what it takes to make a trademark actually be qualified to be registered.

As we have discussed, a trademark must be unique. If someone were to design a trademark like your own, you would want the United States Patent and Trademark Office to reject it. The same thing goes for you and your design needs.

You need to develop and design a trademark that is completely unique and your own. It can't be too similar to other people's already registered trademarks. More so, it has to be unique enough so that your consumers don't

confuse it with other products or services on the market. This would make the trademark worthless.

### ***How Unique Is Unique?***

First things first, you want to insure that your trademark is unique enough to pass the trademark searches and to be legally able to be registered.

There are some ground rules that are established by the USPTO that can help you to understand just how unique the trademark has to be and what's required of it to be considered a unique trademark.

When you apply for a registration for your trademark, the first thing that will be necessary is for a trademark search to be completed.

For this to happen, an attorney will be assigned to investigate. The examining attorney, as they are called, will then search the United States Patent and Trade Office records to insure that your trademark is completely unique and not too close to another's trademarking symptom or design.

The attorney is looking at your trademark in comparison to others.

Is there any conflict?

Is there any likelihood that someone could be confused when they look at your trademark and a trademark of another?

If there is anything that could be found in the records of the USPTO and the mark that is recorded on your application, your application will not go through. They will also use this application process to determine if your trademark is too much like one that is pending approval as well.

### **What They Look For**

The examining attorney will consider several aspects in relation to your trademark.

- The similarity between your mark and the other marks already on file and those that are pending is considered first and foremost.
- The relationship between your trademark and the goods and services that you list on the application.

What gets confusing for a person that is filing for a trademark is what is considered the same or similar? It only takes the trademark to be similar to that of another trademark for the process to be stopped.

In addition, it only takes a service to be related to another to cause the trademark to be stopped. Goods and services that are too closely related in relation to their trademark are conflicting as well.

### **When Conflict Happens**

If and when there is a conflict and your trademark is considered to be too close to that of another's trademark, the application for your trademark is denied and refused by the examining attorney.

If there is another application that is pending acceptance at the same time that yours is and each of you has a trademark that is similar, the trademark application that was submitted first will have the priority. You will be notified that there is another application pending that has a trademark that is similar to your own.

In that, should that trademark not go through for some reason, then your trademark would be eligible to be filed. Should that trademark actually go through and become registered, then there is a conflict and your trademark would not be filed with the federal process.

The examining attorney makes the decision regarding the issuance of how similar to two trademarks can be.

Should there be enough similarity; the trademark filed second is not accepted. This can be quite difficult to take on considering you may have spent dollars and hours working on developing the right trademark for your specific business or product.

### ***Pre-searches***

In order to know if your trademark is unique enough, you can have a pre search of that trademark done for you. This allows you to learn if there are other trademarks that are already registered that could potentially conflict with your own. This provides you with some protection from being rejected after all the work you put into the process.

Yet, you should know that the United States Patent and Trade Office does not perform any type of preliminary or pre-searching of the records for you before hand. You can not ask them to check the records to insure your trademark is not on file. They can't tell you if there are any conflicting marks out there.

Yet, you can get help in finding out this information, which is something you should definitely consider doing for your own protection.



By having a trademark search done before you enter an application, you provide for several key factors.

First, you make sure that your trademark does not infringe upon anyone else's trademark. This is vitally important since you do not want to have your trademark conflict and therefore be rejected, wasting your time not to mention your money.

In addition, by having a search done before you are actually filing the application for a trademark, you also insure that your trademark application will be registered successfully the first time.

By going through the search phase beforehand, you learn if your trademark will be Okayed to move through the process of if it will be facing several risks in doing so. Ultimately, you want to insure that there are no risks, or every few in your way to trademarking your image, design, logo or your name.

There are several ways that you can get a search of the trademark database to learn this. These records, remember, can not be searched for you by the USPTO until you file a petition.

## **Free Searches Found Online**

There are some abilities to do this search for yourself without charge online. This is one of the most simplistic of types of searches that you can do. And, it's not a definite to ensuring that there are no blocks in the road coming up. Yet, it can be helpful in helping you to determine if there is a possible problem and to solve it before you enter into anything more costly.

You can easily use any of the larger search engines to get the information that you need. Start with Google. All you have to do is to type in your trademark name. You should also search for a description of your product. Doing this will determine if there are any other companies out there that are using your name, saying, or logo.

If there are similar names and goods out there, it is best to just stop there. If a simple search like this can turn up several key problems, then a detailed search on the USPTO records will definitely show a problem.

Perform one search with both the name of the trademark and a description of the product. Then, perform another search that includes just the logo or trademark name. If both clear, move on to the next searching tool for additional

reassurance that your trademark is actually capable of passing a registration application test.

## **TESS**

The TESS is another option that you have. TESS, or Trademark Electronic Search System is a free trademark search that is done online. This service is one that is offered by the United States Patent and Trade Office itself.

This service is one that you should use next. It allows for you to search the database of trademarks that are similar or the same as your own. Here, you will use the same types of strategies to search for trademark conflicts as the examining attorney will.

Yet, you need to be careful in this search. Do not assume that just because your trademark does not come up in the TESS system that it is okay to go through. The problem lies in trademarks that are different but similar. For example, if you are selling the same type of product that another company is and your trademark is just another name for theirs, this is considered to similar and therefore it will be rejected.

With the TESS system, though, this type of problem doesn't show up to you. Therefore, you still could potentially have a

problem with your trademark even after all of these searches come up clean.

The only way to know for sure if your trademark will be registered is with a trademark attorney.

## **US Trademark Search**

Another option that you have is to hire a company to do the searching for you. While they can't tell you 100 percent for sure if your trademark is going to be registered, they are the best bet for you to insure that your trademark is authentic enough to pass.

A US trademark search is also known as a Federal Trademark Search. It is conducted by a trademark search company. This search will entail a complete search of the trademark records and gives you the best possible likelihood of the trademark passing.

It is usually conducted by a trademark attorney that is familiar with and working with the USPTO service therefore understands the ins and outs of the business. They will provide you a detailed report that analyzes the potential for your trademark to actually become a registration as well as defining why not.

These companies do charge you and their fees can range quite a bit. Yet, many people feel that knowing that their trademark is actually likely to go through is worth this additional cost.

One word to the wise before you proceed though. You should realize that not all companies are out there for your own good. Talk to several; compare what they offer as well as what they charge. Check them out with the Better Business Bureau to gain even more information on the likelihood that they are working with your best interests at heart.

Understanding the importance of having a trademark that will pass registration is important. Although many people will submit applications for trademarks, only a select few will be granted them because they have done their homework to insure that their trademark is their own.

Although paying for this type of a search should be something you consider, take the time beforehand to do the free searches yourself. This can help to clear the way for any easily found problems so that when you do pay for a search, it is going to be one that comes back with the best possible results.

Now, how should you create that trademark in the first place?

## **Chapter 4: Creating A Trademark That Works**

Although we have talked a lot about the process of registering your trademark, you first have to develop one to do that.

It sounds easy. Just use your company name and that's that. The problem with this is that your company name may not be the best choice for you to trademark. If you are a company named "Smith" for example, there could be hundreds of other companies out there with the same name.

Even more so, the term "smith" doesn't really tell the consumer anything about your product or service which means it doesn't create nearly the buzz that it needs to in order to be successful for you.

When you are choosing your trademark then, you need to consider both the ability of the trademark to be protected, as we have discussed, as well as the likelihood for you to be successful in a marketing campaign for that trademarked term.

You need a unique trademark that is easy to market for your cause. It's not easy feat.

In fact there are many different things that should go into this process that have to be considered from the beginning by you, the potential owner of the trademark. Here, we'll talk about several of the important considerations you have to think about when it comes to selecting the right trademark for your needs.

### ***Considerations For Brand Names***

Your brand name may seem like the perfect type of product to trademark. After all, it is your name. But, that's not always something that can work. One reason for this is the fact that the United States Patent And Trade Office has some pretty strict rules on what can and can not be trademarked in the first place.

In their term, "a spectrum of distinctiveness" must be used. They use a scale of how easy it is to protect the brand name using a trademark. The more unique the term and the more distinct it is, the more likely it is to be protected. Not all brand names can fall under this category, though.

The more unique and distinctive, the more likely it is to be protected. Therefore, consider a trademark that is fanciful, suggestive, and creative. But, don't consider a trademark

that is a description or a generic term. Let's break a few of these types down for you.

## **Fanciful**

Consider a fanciful term, for example. If you look at many of the different trademarked names out there today, you would not have known them before they were trademarked as terms that were very familiar.

For example, you probably have never heard the term "Starbucks" before you saw the business and learned what they offer. But, today, if you ask most Americans if they want to stop at "Starbucks" they would know just what you are talking about.

This term meant nothing to you or anyone else before it was coined by the coffee giant. Others that are like this that you may know include "Verizon" "Applebees" and "Exxon." As you can see, you probably never heard of these terms before they were used to help trademark a company.

These fanciful types of brand names work as trademarks because of how unique they are. They are an immediately beneficial trademark to the company.



In addition, because they are so unique that no one can ever claim to have used them before, the trademark given to them can provide the most protection possible.

## **Arbitrary**

Another term that the USPTO uses to describe the most able to be protected types of trademarks are those of arbitrary. It is, like that of fanciful, one of the best types of trademarks to consider using.

An arbitrary trademark is one that has a term in the English language that is used to trademark or brand a product that has nothing to do with its actual English meaning. There is no relationship between what the word actually means and what the term is being used to brand.

For example, you may right now be using one of those types of trademarked products. The Apple Computer is the ideal example. Although the term "apple" is used to trademark the computer company in a very distinctive way, the term itself "apple" refers to a fruit, not a computer.

Therefore, since a computer and an apple have little in common with each other, this is an ideal match for a trademark in the way of protection abilities.

On the other hand, though, if you were to be growing apples on a farm, a trademark of "apple" just would not work here.

Because there is no connection between the name of the trademark being used and the actual product, it is easy to protect this type of trademark. Therefore, arbitrary marks are some of the best to use from a trademark standpoint. As for how you will market them, that's a different story altogether!

## **Suggestive**

Yet another term that the USPTO uses to describe those situations in which a trademark can and can not be protected is that of suggestive. Although it is in the middle of the scale between good and bad, in most cases, a suggestive trademark can be an excellent choice to consider for a trademark or brand name.

In a suggestive trademark, there is some correlation between what the term is and what is being offered, but you must really think outside of the box to come up with just what the implication is. These suggestive trademarks can allude to something that is offered or a characteristic of the product or business but it must be somewhat difficult to come up with a conclusion.

A popular trademark that you probably know that is considered to be a suggestive trademark is that of 7 ELEVEN. You know these are the corner stores that you grew up with. But, you may not have realized that this convenience store was once open from 7 am to 11 pm and therefore is named as it is.

There are many others out there just like this. Consider "Playboy" as another example. Perhaps you have heard of the "Greyhound" which implies the speed of the transportation.

These types of terms are ideal because they can be easily trademarked without any worry about what the potential trademark infringement would be.

Yet, one thing that is common about each of these types of trademark choice is that they can be difficult to market. Sure, it makes sense to trademark "greyhound" for a bus fleet, but in order to let the community know that this is a bus fleet; you will need to spend a good amount of marketing dollars to do so.

For that reason, many times companies will use less arbitrary and fanciful types of trademarks and will instead do with something that is more descriptive, especially when marketing dollars are less.

## **Descriptive**

Descriptive is another type of trademark that is used to describe the brand name, but this time the trademarked name will actually be a description, in some form of the product.

The benefit of a descriptive trademark is easy to understand. A company that doesn't have a lot of marketing dollars can't spend a fortune telling their consumers that the term "orange" refers to their type of radio. Instead, descriptive terms are ideal for those that are using them to help market their business.

You can find many of these terms used. The toy store, "Toys R Us" is a great example. You can easily see what the store is all about but it still has a unique feel to it. "Value Mart" could be another one.

Yet, as with the example of "Value Mart" the USPTO often has problems with providing trademarks for such descriptive and common place types of names. That's because there are likely to be many different "value marts" out there that could potentially be in trouble should they register a trademark like this.

One way for a company to get around this type of problem is to create what is called a "secondary meaning."

A secondary meaning is one that has been created by the company, perhaps through extensive marking and advertisement. By providing a simple term as a name brand, they have done so well at establishing their name brand through this that it actually is a secondary meaning for the term now.

For example, "Frosted mini wheats" doesn't sound like it should be trademarked since it is a common name and description of a product. Yet, when you hear the term, "Frosted Mini Wheats" you likely think of those square breakfast cereal ingredients. It's created a secondary meaning for the term. The challenge is proving that it has done this.

Even with this said, it is important for you to realize that if you do use a descriptive term to help promote your product it is very difficult for most companies to gain that secondary meaning. In fact, for a company that is new and without a marketing budget, it is near impossible to do.

You can use a term like this for marketing benefit easily. Yet, you should consider looking into terms that are more unique and therefore more likely to gain protection from a

trademark, something more descriptive terms like these find.

Without a trademark of your brand name, you simply can not stop others from profiting from it. Any time and effort you put into making it something unique will still be potentially at risk if someone else uses it because it is unregistered.

## **Generic**

There are some terms that just have no potential of becoming a trademark. If you want to trademark your phone to be "phone" it just isn't going to work. When your trademark is something that is used to describe a single product or even a whole class of them, it is too similar to other products and unlikely to be trademarked.

There is no way for the USPTO to actually protect a trademark that is used commonly like this and therefore it will not pass registration.

Sometimes, trademarked items actually do too well. For example, although the company name of "Kleenex" is a trademarked name, today, most people don't ask for a tissue, they ask for a "Kleenex." The same is true for the "Q-Tip" as it too has become the name to describe cleaning devices that are used in your ears.

In some cases, this happens so much so that the term actually becomes the term to describe that type of product. When a trademarked term actually becomes a generic term, it actually loses that trademark. This process is actually called genericide.

There have been many products that have had this happen to them in the past. When you go to the mall and use the moving stairs there, you call them an "Escalator" which used to be its trademarked name. Now, they all fall under this term. The same goes for the bouncing thing that your kids wanted called a "trampoline."

Now that you have all of this information, you can make a decision about the trademark that's right for you, right?

It really is still not that easy. How can you come up with a great trademark that will fill your need? Will you use a fanciful trademark? Or, is descriptive the best that you can do on your low marketing budget?

You don't have to make a decision on this type of thing just yet. Instead, work through a few more exercises to help to determine what the right trademark is for you. You can also do some research on some things you think may work to find out more.

## ***Ideas To Spur Your Trademark***

If you need some help in determining the right trademark term for your use, we've got a few for you. A search online can help you to find even more ideas to help you to determine the best possible trademark for your product or service.

Probably some of the easiest and even the most beneficial types of trademarked terms are those that are suggestive. They can also be the easiest to market with trademark protection abilities unlike the descriptive terms that you may think to use.

But, unless you are a naturally creative person, these can be somewhat difficult for you to come up with. Here are some ideas that can help you to determine a trademark or brand name.

- Think about terms related to other cultures or other products. Think about animals, plants, and different terms than you would normally use. For example, you could easily pull the features from a Greek god into virtually any type of trademark because of that god's abilities or what they were known for.



- Consider things that you know well. For example, sports, music, even history can be used to help generate some types of trademarked terms. Is there a term for a goal that could be used to talk about your sports equipment? Consider the various things that you know about well from even simple things and change that into something that fits with your product.
- Think about what words you would like your product to demonstrate. Is your type of website to provide information regarding a topic that is thorough? If you want wisdom to come through, for example, consider those things that bring about that thought of wisdom. This could be owls, because owls are considered a symbol of wisdom.

## **Brainstorm**

Another thing that you should consider doing to determine the best trademark for your product is to sit down and brainstorm.

Think about those words that come to mind first when you think of your service or product. Think about descriptive terms that showcase the benefits, the cost effectiveness or the tools that your product provides. Consider the various methods that it can be used. Determine the characteristics of that product.

Take the time to jot all of this down on paper. Anything and everything that comes to mind will be helpful to you here.

Now, take the time to find out if you can pull any of that together into a descriptive term that is not too familiar. Try putting together some words that offer distinct characteristics. It doesn't even have to make sense. You only want to use terms that are positive, of course.

### **Making Acronyms Work**

Many people like to consider acronyms because they can really mean anything you want them to mean. You can definitely do this and be successful.

Probably one of the most successful examples of a trademark that is an acronym is that of IBM. Most people have no idea that it means International Business Machines, but they know that they can rely on an IBM product.

Sometimes an acronym can help you to be as descriptive as you want (for example using several of your brainstormed terms) without being obvious and therefore being successful at protecting your product.

Is there an acronym that you can come up with that will offer your brand name some success? Try to put together a word this way for a more arbitrary trademark.

## **Speak A New Language**

Another great option that you should consider is that of other languages. You can always use a foreign language as a tool for coming up with a new trademark. If you speak another language or have the ability to look up a few words that would describe your product, go for it!

Using “very good” would be very common and nearly impossible to trademark. But, using “Tres Bien” would work to your favor in the United States. You could couple that term with your own product’s descriptive term could be very helpful.

One thing to note though about using different languages is that you still can’t be very generic about them. The USPTO will still go through and check for how generic the term is. If you are using a term that means computer in another language, it won’t be able to actually get trademarked as that simplistic of a term.

## **Make It Up**

Go ahead. Put your mind to paper and just make up a word. Put it together as it sounds. Think of something that is a combination of words that somehow works with your product. Perhaps you could abbreviate the two owners of the product's names and combine them for a new word.

Many products have come this way. In fact, as we discussed this can be one of the best ways to get your product trademarked. It is a completely unique term that is yours alone to use.

While it may be more difficult to market this term, you'll still find benefit in using it because of how distinctive that name is. You will be able to go through trademark as long as you make sure that no one before you has come up with the same combination of terms.

There are plenty of ways that you can come up with a term or phrase that can be trademarked and therefore be beneficial to your trademark process. The best thing for you to be here is creative!

## ***Can't Do It?***

Okay, so not everyone actually is creative enough to come to an agreement on a trademark term. You can hire a firm or even a trademark attorney to provide you with some help in this regard. You can find many companies and even freelance writers willing and able to provide you with the help you need.

If you hire a trademark attorney for this task, insure that they will also provide for some type of analyze that will insure that what they come up with is unique enough to pass trademark registration.

While this may cost you a bit more money to make happen, for many companies and individuals, it is the best possible solution for your needs if you have a lot riding on that trademark and you don't want to take any chances. You do, of course, have the final say in if it is used.

## ***Getting Trademark Clearance***

Hopefully by now you have a few ideas of what you could use as trademarks for your new venture. Take your time here so that you can be sure you have just what you are

looking for in a trademark. Even better, make sure that you have several to choose from.

Most individuals will go into the process of selecting a trademark with a few choices; just in case one or two don't work they have something else that's immediately available. Otherwise, the process really can become drawn out.

Work with an attorney (which we'll talk about next) to help you to get through the process of registering your trademark. If you've hired them to provide a service to you, insure that they will help you throughout the entire process.

Now that you have several different trademarks to choose from, go back to our last chapter and go through the process of searching for those terms using the free searches and the US Trademark Search. Find out as much as you can about the other companies that could be using trademarks similar to your own.

Once that's done, you can move into the application process. You should consider getting some professional help during this process, which is why our next chapter is about trademark attorneys and what they'll provide for you during this process.

# **Chapter 5: Hiring A Trademark Attorney**

Why do you need an attorney for this trademarking process?

The fact is that there are countless reasons that you do. In many cases, having an attorney working with you can help you to get through the process faster, more efficiently and believe it or not, without having to pay nearly as much.

How can you save money by working with a trademark attorney? It's simple. The fact is that you are likely going to make costly mistakes trying to interpret trademark law on your own. You'll also probably go through the application process several times, being rejected by the United States Patent and Trade Office. That is not to mention the time that you waste (time is money right?) during this whole search.

With the help of a qualified attorney though, you could breeze through the process and even get help in selecting the right name to use to trademark your product or service in the first place.

Consider the reasons and the role that they will play.

## ***Help For Trademark***

The first and probably the largest relief that a trademark attorney will provide is help to you in selecting the right trademark phrase or term for your needs. While coming up with the name is important, so is making sure that no one else is using it.

Therefore, since your trademark attorney should have this information available to them, they should provide you with a trademark search as we've discussed. In fact, select one that includes this in their fee otherwise you'll pay additionally for it.

Once the results from the search come back, he or she should also help you to find solutions to your needs regarding that trademark. In addition, they will be there to work with you through the process and offer you ideas, suggestions and knowledge about anything and everything that you want to know about it.

## ***Application Help***

While it sounds easy to actually fill out an application, remember that you are talking about the legal system here, which is often riddled with ifs, ands and buts. Work with them on this. A skilled attorney will be able to provide you



with help in filling out and applying for the application of registration of your trademark without doubt.

In addition to doing so, insure that they will provide an accurate and unique description of your product. Find out what will be included and approve it. Don't assume that they aren't rushing through the process. A good attorney will pay close attention to the details.

They should insure the application is complete and meets all of the necessary requirements. You should also insure that they have experience in providing this type of application for a trademark.

In fact, should the United States Patent and Trade Office have questions, your attorney should be able to easily handle them for you. They should be able to help you with any other company that is working against your application or even has infringed on your trademark themselves.

Having legal help by your side is almost a necessary consideration when it comes to trademarking. It helps you to keep your experience positive and to stay out of trouble. It also just makes the process easier on you. Finding a qualified attorney that is a specialist in trademarking isn't hard. Do research them, though, to find the best quality professional to work with.

# Chapter 6: The Details Of Trademarking

So far we have talked a great deal about the process of getting your trademark in place from beginning to end. But, there are some other details that are just as important and very much a part of the process that you also need to take into consideration.

For example, it is essential that you consider the timeline, the cost and the trademark law and how it affects you throughout this process. Briefly, we'll describe the various important aspects of trademarking that you need to understand to make the right decisions about this process to secure your needs.

## ***The Timeline***

First and foremost, most people want to know just how long the process of securing a trademark will take. They need to prepare for what lies ahead. Once you have submitted your trademark application, you will wait any place between a few weeks up to 4 to 5 months to hear anything back.

About that far into the process the trademark application will be reviewed by the United States Patent and Trademark Office's trademark attorney. Although you may have hired one to work with you on your application process, this one is working for the actual USPTO and therefore will not work with you directly.

He or she will issue their decision about the trademark. If there is any reason for the attorney to deny your trademark, you will be alerted in an official action letter. In that letter he or she will let you know exactly why your trademark was rejected.

From that point, you have six months to file a claim against it, or to fight it. IF you do not do so in that time frame, the application is then considered to be "abandoned" and is no longer valid.

The most common reason that your trademark will be refused is that of a misunderstanding of what the trademark should be and what it is in comparison to other trademarks that are already in place with other companies. If your trademark is not unique enough to an already registered trademark, it will be denied.

If your trademark is too generic, as we've discussed, it too could be rejected because of this. There are other reasons that it can be rejected as well such as an application that is

not complete, an inappropriate terminology or some other reasons that is described.

You do have the right and the ability to fight this claim and you can find success in doing so. You should work with an attorney to make that claim, though, since you will want to insure that the process is successful if it is at all possible to make it successful.

Once your application has passed through the USPTO's trademark attorney's hands, the next stop is called publication for opposition. Here, the trademark that is in question will be published in the "Official Gazette" which depicts all trademarks that are pending.

Anyone that believes that they have a reason to fight you on your trademark will have thirty days from the time of the publishing of that trademark in the publication to object or to file for a longer period of time to object. This is rare as most will have no reason to do so at this point.

Sometimes there is an objection because the opposed believes that the trademark in question will somehow damage their own trademark, perhaps being too similar. If this happens, there is a trial like occurrence in which a decision will be made to determine who has the right to use the trademark and its likely effect.

Once you get through this marking, in which there are 30 days for others to disagree with your trademark, you pass into the Registration and Notice of Allowance phase of the process of trademarking.

For those that are already using the trademark at this point in their commerce business, the USPTO will file the registration at that point and issue the registration certificate. If you have not been using the trademark up until this point, then you will have up to 4 additional months to file a State of Use statement. Once this is filed and approved, you will be given a registration certificate.

Then, the trademark is yours!

### ***The Cost Of Trademarking***

The cost of getting a trademark is one that changes from one applicant to the next for several reasons. The costs will jump significantly if you hire a trademark attorney to help you in the process. If you hire a trademarking company to help you through the development of your trademark, then you will pay an additional amount of money to them.

Each company also charges different fees. There are no two companies out there that are going to provide you with the same exact fee schedule. The best way for you to actually

find the company that offers the most affordable costs is to call on them and compare them.

Yet, there are some fees that you can consider. First and foremost, the federal government has their own fee to register your trademark. At the time of this writing, the cost for the trademark filing fee that the federal government charges is about \$375 for a single federal trademark application.

If you will be filing a state application for trademarks, then this fee is generally much less than that of the federal fee, yet can still run about \$100 (each state has a different fee schedule.)

International trademark fees really range in price depending on the country and the needs that you have. You'll want to work with a trademark attorney to determine the fees of trademarking outside of the United States.

In addition to these fees you can expect to pay some additional costs as well. For example, most will pay someone, usually a trademark attorney or a trademark company to prepare their application for a trademark. If you do this, you can pay a couple of hundred dollars on up into several thousand depending on the company that you hire.

In addition, there is generally a fee that ranges widely for the trademark search. This fee can be inexpensive at \$100 or it can jump up to \$600 to \$700 depending on what type of search is used.

There are other fees as well included trademark renewal fees, deadline monitoring fees, declaration of use preparation and much more. As we said, each company offers their own costs and you should consider these secondary to finding someone that you trust to provide your trademark process through.

### ***International Trademarking***

In addition to having your trademark registered in the United States, you may also want to have it registered internationally. This process is a good idea if you plan to market or sell your product overseas as it helps to provide distinction there as well.

When you obtain a federal trademark register you do not have international status at that point. You do, however, have a better chance of obtaining it because you have the federal register.

In order to obtain international trademark register, you will need to be considered the qualified owner of the application

for a trademark with the United States Patent and Trademark Office.

Or, you may do so if you already have registration of that trademark already in place. You will need to select the countries you wish to place your trademark in and they should be part of the Madrid Protocol.

Through a single application which is called an International Application for Trademark, you can obtain this right. The organization in which you will be using to obtain it is called the "International Bureau of the World Property Intellectual Organization." You can contact them through the USPTO, though.

In order for you to obtain the registration of your trademark in a different country, you will need to abide by that country's laws regarding it. Each country has their own set of laws, yet many of them recognize your United States registration as a basis for qualification of your application (although an application process still must go through.)

Registering an international trademark is something that you should consider doing especially if there is any chance that you will promote your product overseas. Yet, it doesn't have to happen right away especially if you have not yet been successful with promoting it.



# **Chapter 6: A Bit About Intellectual Property Law**

Intellectual property law is the governing body of trademark law. There are several branches of it, each with its own duty and its own bearing on your protection. You should understand the differences of each so as to insure that no assumption is made about them.

The first and probably the most important type of protection in property law is that of the patent. This type of law protects inventions. Patents are used to help individuals to protect the things that they invent. Anything that is uniquely designed can be patented.

With patent law, there is the ability to protect the item from others making something similar or the same, from others using the item and from others selling and therefore profiting from the item.

The next consideration under intellectual property law is copyright law. This type of law protects those that develop something that is creative that is to be used only for its intended use by that person.

Those that write books, those that design art and those that produce movies are prime examples of individuals that should find copyright law useful. This type of law protects them from anyone else copying the work, reproducing it in any way, or from distributing the work to others. Here, the goal is to protect the expression of the work.

The third and final type of property that is protected here is that of trademark law, which we have defined in the first chapter of this book.

### ***Where Did It Come From?***

Trademark laws actually began well back into the 13<sup>th</sup> century. It actually took place in England at that time. The goal of this first trademark was to protect consumers, not to protect the actual product in question.

The need was to protect others from falling victim to counterfeit products that were less than desirable was actually the goal of these first trademark laws.

It took until the 1870's for the United States to adapt trademark laws. In fact, although they were used before this without registration, England as well as the United States set up actually offices that were to govern the registration of trademarks. During this time, the official

office was called the Trademark Department of the United States, or England.

### ***Trademarking Today***

Although it may seem like an old world thing to trademark your product, it is very much something that is thriving today. In fact, there are actually many more trademarks issued each year in the United States than there have been in the past.

According to the Department Of Commerce's United States Patent and Trademark Office, the fiscal year of 2006 was one that broke records. As for what records were broken, it is not so much of the actually records as it is for the quality of the process and the trademarks that were issued during this time.

According to the USPTO goals related to, "the quality, production, electronic filing, telework, electronic processing and the hiring" were met or exceeded during this time. That is significant because of the demand on the facility during this time.

# Checklist Of Trademarking

Here's a brief, condensed version of what you need to do to obtain the trademark you need and want for your business or product.

1. Develop an effective trademark that works for your goals in marketing and distinction. Insure that it is fanciful, arbitrary, or suggestive in nature to insure it will pass the trademark search.
2. Do your own search for the term or trademark online through search engines. Free searches are useful, too. Make changes that are necessary to make your trademark unique.
3. Hire a trademark attorney or a trademarking firm to handle the actual trademark search to insure that there is no other product like your trademark being used.
4. Apply for the trademark and fulfill all application requirements. Answer any questions that the USPTO may have and monitor your trademark's progress.
5. Register a Use of Statement form to have your trademark finally registered. Insure that you renew your trademark on time.

## Conclusion

Having a trademark for your business is crucial if you want to stand out from the millions of other businesses out there today. The United States Patent and Trademark Office has seen a surge in the number of trademarks that come through its doors. Perhaps this is because there are so many new businesses starting up. Or, it could be a direct relation to the fact that people want to protect what they design and create for their own needs and their profit goals.

If you want to, and have the ability, you can hire a firm to go through the entire planning, development and application process for you. You could hire a marketing firm to handle this as many large corporations do. Why bother with such a costly investment?

A trademark is a significant element in your company's future. It helps to set you apart from countless other people, companies and products out there. Think of the largest trademarked names you know of. McDonald's, Nike, Kellogg's, M & M's are just a few that come to mind.

Will your business's trademark be the next trademark that dominates the marketplace? With careful design and implementation, it could very well be so.

