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What Small Businesses Should Know About Trademarks

Businesses that offer valuable products and services at fair prices work hard to build consumer loyalty. When they succeed, consumer goodwill generates repeat business and referrals. Few businesses write their name in chalk on their headquarters or on the company truck. Yet, for them to ignore trademarks is almost as bad.

Businesses must make the most of trademark protection. Trademarks guard commercial reputations, but those to whom they are most important often misunderstand them. Many do not know, for example, that in the US, trademark rights flow from merely *using* good marks. Trademarks do not wear out or expire and, in fact, become more valuable as goodwill grows. Trademarks are often the most important assets of established businesses. Imagine the loss if the company that owns "Pepsi" had to give it up!

Trademarks are not copyrights or patents. They cannot be used to stop others from copying goods or services. Nor can trademark rights prevent use of common descriptive (generic) words. Trademarks are brand names, distinguishing one company's goods from those of another. Technically, "trademark" means a symbol used with goods, rather than services. Marks used with the latter are called "service marks."

Trademarks are easy to get, but marks should be chosen as carefully as product designs, location or key personnel. That choice is a major business decision. If a company chooses a good mark, purchasers will have no trouble distinguishing its products or services from those of its competitors. Marks similar to those used by companies in similar markets are among the worst choices. Once a mark is chosen, it is wise to conduct a trademark search to see if others already have rights. Failing to search increases the risk that others can prevent your expansion into new geographical or product markets, or worse, the loss of goodwill investments.

In the US, the risk of having to share marks can be further reduced by taking advantage of state and federal trademark registers. Registration by one firm will not take away territory already used by others, but it may deter or prevent expansion. State registers protect marks for use within their borders, while federal registers cover the entire US with its territories and possessions. Federal registration, costing \$1000 or more, may seem expensive but it is the only way to ensure that the entire nation is free for expansion.

Before federal registration can be obtained, however, a mark must be used properly. For goods, this means that the mark must appear on labels, not only in advertising. It also means that word marks should never be used as verbs or nouns. Trademarks are adjectives: the seller of Gizmo brand gadgets must never say that its gadget "gizmos" or refer to its gadget as a "gizmo." It must always use the mark with the word gadget as in "the Gizmo gadget" or the "Gizmo brand gadget." Those who do not heed these rules will get into trouble and can lose their rights.

In determining whether trademark protection is right for you, ask yourself this question: will it cost more first to investigate prior users of a certain mark or later to suffer the expense and inconvenience of asking your customers to seek your products under a different mark/name? We ask that you take an important step in protecting your hard work and talk to us about trademark registration today! Better late than never.