

Does My Small Business Need a Trademark?

Trademark Basics for Small Businesses

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1. Introduction

In today's market, memorable trademarks play a crucial role in identifying the goods and services of a business. A small business's unique names, logos, and/or designs, also known as trademarks, enable customers to quickly recognize and patronize its products. Through trademark protection, small businesses can protect their reputation and prevent others from selling counterfeit goods and services. This is why it's never too early or late to think about trademark protection for your products and services.

2. So, what is a trademark?

A trademark is a word, symbol, design, logo, or a combination of any of these things that

- (1) identifies the source of a businesses goods and services; and
- (2) distinguishes them from the goods and services of other competitors in the market.

Examples of famous trademarks include Google®, Starbucks®, and Nike®. Sounds, color, scent/smell, product packaging, and/or shapes can also be trademarks provided they enable customers to identify the source of goods and services. For example, the shape and contour of a Coca-Cola bottle has been registered as a trademark. The word "trademark" can refer to both

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trademarks and service marks (SM). A trademark is used for goods, while a service mark is used for services.

3. What is not a trademark?

- (a) **A trademark is not a trade name:** A trade name is the full name of a business while a trademark is used to distinguish a business' goods and services. Registering a trade name with a state or local jurisdiction does not give an organization any trademark rights. Separate steps must be taken to establish trademark rights. A trade name may however serve as a trademark only if it is used to identify the source of goods and services.
- (b) **A trademark right does not mean a small business owns a word, logo, or phrase in absolute.** It only gives exclusive rights to a word, logo, or phrase in relation to specific goods and services. For example, a jeweler who uses a certain logo as a trademark for their jewelry in Washington state cannot prevent another person from using similar markings for selling furniture.
- (c) **A trademark is not a domain name.** Registering a domain name with an accredited domain name registrar does not give trademark rights. A domain name is simply an address on the internet.

4. What's the difference between trademark and copyright?

Although they both fall under the umbrella of intellectual property, copyright and trademark protect different things. While trademark protects words, logos, and designs that a small business uses to distinguish its goods and services, copyright protects creative and original works of authorship like movies, songs, art works, and novels. Words and short phrases such as business or product names are generally not protected under copyright. For example, while Netflix can protect its name and red "N" logo through trademark protection, there is no copyright protection for the word "Netflix" or its "N" logo. Netflix can, however, protect its original movies and tv shows through copyright.

5. Why does a small business need trademark protection?

Trademark rights provide protection and give exclusivity. A trademark owner has the right to prevent every other competitor from selling similar or identical goods using a similar or identical trademark. Why is this important? **Protecting your trademark means you are protecting your reputation.** Trademark protection also allows small business owners to protect their goods and services from larger competitors and vice versa. As your business grows so does the value of your trademark as it becomes recognizable to customers.

6. Who can own a trademark?

Anybody can own a trademark including individuals, nonprofits, sole proprietors, LLCs, Corporations etc. There is no requirement for U.S citizenship.

7. How do I select my trademark?

It is important to pick a mark that is distinctive and is not confusingly similar to other marks. A mark is distinctive if it clearly identifies and distinguishes the source of a good rather than merely describing the goods itself. It is important to conduct a search on the internet and the United State Patent and Trademark (USPTO) database before selecting a trademark. This [video](#) shows how to select a trademark.

For example, Apple® is an inherently distinctive mark in relation to computers and cell phones. The mark clearly distinguishes the brand of computers from others on the market. However, an apple farmer attempting to use the same mark “Apple” for the fruit will not have a protectable trademark because “Apple”merely describes the goods.

8. How can a small business acquire trademark rights?

A small business acquires trademark rights as soon as it starts using the mark to market and sell goods, and services. No business will acquire trademark rights by simply coming up with a fancy logo and sitting on it. If another business starts using the trademark to sell goods and services first, that business acquires exclusive right to the mark in relation to the goods and services.

There are two sources of trademark rights for a small business owner: Common law and Federal registration.

- (a) **Common law:** A business owner has common law rights if the mark has not been registered with the United State Patent and Trademark office (USPTO). A small business acquires common law rights if the business is the first to start using a mark in commerce in relation to specific goods and services. However, the business’s trademark rights are limited to the geographical area where the mark is used or advertised. For example, a jeweler based in Washington state using an unregistered logo as a trademark for marketing on the West coast has common law rights and can only prevent competitors on the West coast from using a similar or identical mark to sell similar goods but not in New Jersey. Owners of unregistered trademarks can use the “TM” or “SM” symbols, but they cannot use the “®” symbol until the mark is registered.
- (b) **Federal registration: Trademark registration with the USPTO is not mandatory.** However, it does have several benefits and gives more expansive rights that are not geographically limited. A small business may have multiple trademarks. It is up to the small business to determine which marks should be registered. There is no requirement that the business register all of its marks. Registered trademark owners are able to use the ® symbol.

9. What are the benefits of trademark registration with the USPTO?

- (a) **Exclusive rights to use the trademark nationwide.** A business owner who has a registered trademark can prevent competitors from using similar marks **nationwide**.

- (b) **Presumption of ownership.** A registered trademark owner is presumed to be the owner of a trademark in a court of law. This means that no proof of ownership of the mark will be required once the trademark owner has presented a certificate of ownership in a law court.
- (c) **Trademark is listed in the federal trademark database.** Having a trademark listed in a federal database gives public notice. In other words, competitors will have notice of your rights to a trademark when considering using similar marks.
- (d) **Recordation with U.S Customs and Border Protection.** A registered trademark owner can record their registration with Customs and Border Protection and prevent importation of counterfeit goods.
- (e) **Using the ® symbol.** Only registered trademark owners can use this symbol to give public notice of their registration and deter others from using their mark.

10. What is the duration of a trademark right?

A registered trademark owner will continue to have trademark rights for as long as registration is maintained with the USPTO. An unregistered trademark owner will have trademark rights for as long they continue to use the mark in commerce.

11. How can a small business maintain trademark registration with the USPTO?

Protecting a trademark does not end with registration. To maintain registration, a small business owner must:

- (a) Continue to use the trademark in interstate commerce
- (b) File registration maintenance document within the required time periods and pay maintenance fees- if these documents and fees are not paid it is possible for another company may register the trademark.
- (c) Keep correspondence information updated.

12. Trademark resources:

- Trademark basics- This video series provides detailed overview information about trademarks.
- What every small business should know about trademark- A must for anyone interested in starting a business to sell a product or offer a service. It highlights the important role of trademarks in that process, including a discussion of how trademarks, patents, copyrights, domain names, and business name registrations all differ and how to select a trademark.
- Trademark registration fees- Information on costs to register your trademark with the USPTO.
- Trademark Application portal- Link to start the trademark application process.
- Conducting trademark search- A searchable database of registered trademarks. Be sure to check here before selecting a trademark. Click [here](#) for more information on how conduct a trademark search



- Maintaining trademark registration- Guidelines on how to maintain trademark registration with the USPTO.
- Monitoring the status of a trademark application or registration- This portal helps monitor the progress of a pending trademark application or registered mark.
- Communities Rise Intellectual Property resources including an [article on copyright](#).

13. Eligibility for Communities Rise Small Business Legal Services

Communities Rise supports eligible entrepreneurs seeking to protect their trademarks with free legal assistance. Please note that in light of our mission and limited legal resources, we are prioritizing low income BIPOC small business owners in their efforts to establish thriving businesses to support their families and local communities. Feel free to see more information about our legal services on our [website](#).

Following our vision for a more equitable Washington, we are proud to offer two avenues of assistance for low-income small business owners; our clinics and our full representation services. To be eligible for free legal services through our clinics or full representation, all business owners must demonstrate the following:

- The business is registered in Washington state;
- Seeks legal assistance with business or organizational law needs;
- Is unable to pay for legal fees without significant hardship to operations;
- Owners' household income is below [80% of the King County HUD guidelines](#); (all owners must qualify if more than one)

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