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Trademarks and Service Marks for the Small Business Owner

Small businesses are the backbone of the American economy. With the current economic downturn, many individuals are turning toward living the American dream and starting their own businesses.

A trademark is a unique word and/or symbol that associates a product with a business. A service mark is a unique word and/or symbol that associates a service with a business. These trademarks and service marks are the lifeblood of a business' recognition, yet they are often neglected by small businesses. Just think of the consequences of another business trying to "ride the coattails" of your hard work and dedication by using a mark confusingly similar word and/or symbol as you have been using for years to market and brand your business.

How to Get a Trademark

This is one of the most difficult concepts for individuals to understand: a trademark is obtained through actual usage. You cannot simply start registering trademarks and then use them in the future. You need to use the mark in commerce and then register it for protection, if protection is desired.

Trademarks and service marks do not actually *need* to be registered to be valid. However, if you wish to protect your trademark or service mark, you should register the mark.

Registration of Trademarks and Service Marks

To achieve maximum protection, the trademark or service mark should be registered. An unregistered trademark or service mark may have some protection, but you will likely need to resort to costly and time-consuming litigation to determine its level of protection. Only a federally registered trademark or service mark may use the ® symbol, whereas a trademark that is unregistered, or registered at the state level, may use the TM symbol, and a service mark the SM symbol.

Federal registration provides protection across the entire United States and some international protection through treaties with foreign countries. State registration provides protection only within the borders of the state. The main reasons for any registration are (1) put others on notice of your exclusive claim to use the words and/or symbols, (2) provide remedies for infringers of your trademarks and (3) have peace of mind to be the only business using the word and/or symbol.

Protection Area

As stated earlier, federal registration provides protection across the entire United States and state protection provides protection in a specific state. Generally, it is better to have federal registration, but state registration is still very useful, especially if you operate a business solely within one state.

Length of Time to Process Application

Federal registration usually takes about eight months to process, but it can take well over a year to complete the registration process. In other words, do not expect overnight results! This is where state protection shines because states generally process a trademark or service mark application within a few weeks.

Cost Involved

Federal registration is considerably more expensive than state registration. The filing fees alone for federal registration are about \$375 whereas state registration filing fees are much less, only \$50 here in Maryland. This is exclusive of attorney's fees.

Length of Protection

Federal protection lasts for eight years and may be renewed as long as the mark is still in use. The length of state protection varies with each state. Here in Maryland, trademarks and service marks are protected for ten year terms and may be renewed as long as the mark is still in use.

DISCLAIMER: This article is being provided for informational purposes only. You should consult with an attorney before setting up a business or registering trademarks or service marks.

About the Author:

Nicholas Proy is an attorney licensed to practice law in Maryland and Pennsylvania. His law firm, the Proy Law Firm, focuses on estate administration and probate, wills, trusts and estate planning, and small business and corporate law.

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