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Protecting Your Brand: Trademark Considerations for Startups



By Myers Dill

Startups come in a variety of flavors, and not all of them want or need trademark or service mark protection, especially during the earliest stages of product or concept development; however, for businesses ready to commercialize products and services, protecting the emerging brand of key products—or the business itself—can be a vital safeguard as they go to market.

Trademarks and service marks cover a very elastic idea: source identification. While there are legal limitations concerning what can be covered, over the years many kinds of source identifiers have been recognized as being capable of operating as a trademark. The most familiar form of source identification is a word, logo or slogan used in the traditional man-

ner as a trademark; however, other types of source identifiers may be accepted as trademarks, including product packaging, sounds, scents, colors, shapes, and even distinctive buildings or building parts.

In a dynamic economy featuring a constant stream of new business creation, even brilliantly unique ideas won't stay unique for long, especially if they are commercially successful. That's where trademarks can protect the value of great ideas and go-to-market strategies. Ultimately, a well thought out approach to trademarks will help companies:

- Distinguish goods or services from those of competitors
- Guarantee the quality of the goods or services bearing the trademark
- Build goodwill in your company
- Prevent confusion in the marketplace
- Prevent others from free-riding

When contemplating when and how to develop a trademark strategy, entrepreneurs

should bear in mind a few key principles.

1. Choose the Right Mark.

The most common errors when choosing a mark for adoption are (a) selecting generic or obvious descriptors and (b) failing to clear marks for use. Startups should opt for distinctive, even fanciful, words and logos, over something purely descriptive. Once chosen, a prospective mark should be vetted to ensure that it is free and clear to use without conflicting with existing marks so as to prevent receiving a dreadful cease and desist letter or, worse yet, being dragged into court.

2. Maintain Your Rights.

One of the worst assumptions made by newer businesses is believing that simply registering a trademark is all one needs to do to enjoy the protections the law affords. Once a mark is registered, businesses still need to demonstrate about five years later—via a declaration—that the mark is still in use. About ten years after

registration, companies will need to renew.

3. Enforce Your Trademark.

All trademark owners need to be prepared for the eventuality of enforcing their rights against infringers; after all, the protections trademark law provides only matter if you actively use them. Importantly, failure to enforce trademarks could lead over time to loss of said rights.

As alluded to at the outset, not all startups need a trademark strategy at the point of new business creation, but many will need it eventually, and that time could be sooner than many entrepreneurs suppose. New businesses should consult with a trademark attorney and know with certainty what events or milestones trigger getting serious about their brand and the marks that protect it.

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