



What Is a Trademark and How to Protect It?

A trademark is any word, name, symbol, or device used in trade with goods to indicate the source of the goods and to distinguish them from the goods of others. A trademark can consist of words, a design or logo, or even a shape, color, sound, or smell. Service marks are similar to trademarks except that they serve to identify the source of services, rather than the source of goods. The word "trademark" is commonly used to include both trademarks and service marks.

Protecting Your Trademark

Common law trademark rights are created when you begin using a trademark in commerce. Common law rights, however, can be difficult and expensive to enforce, because you bear the burden of proving ownership and validity of your trademark and the law will protect you from infringers only in your trade area. And common law provides no right to recover your attorneys' fees, even if you win the case.

A better way to protect your trademark is by registering it with the USPTO (U.S. Patent & Trademark Office). Federal trademark registration provides benefits that are otherwise unavailable to unregistered marks.

You've Made Your Mark - Now Protect It.

Mullin Law, PC can assist you with all of your trademark needs - from registering your trademark with the USPTO to maintaining your registration throughout the years.

Advantages of Registration

- Presumption of Exclusive Ownership Rights
- Constructive Notice of Your Exclusive Right to Use the Mark Throughout the U.S.
- Right to Use Federal Registration Symbol
- Registration Becomes Incontestable After Five Years
- Basis for Registration in Foreign Countries
- Right to Prevent Importation of Infringing Foreign Goods
- Right to Sue in Federal Court
- Right to Recover Your Attorney's Fees

Ensuring that Your Trademark Is Available for Use

Before adopting a new trademark, it is always a good idea to make sure that the mark is available (meaning that it is not being used by someone else in your industry). The most

efficient way to determine whether your trademark is available for use is to search the [USPTO database](#) for registrations or pending applications for similar marks. If the search reveals no similar marks, then a comprehensive search should be performed to ensure that there are no unregistered uses of the trademark that may cause problems in the future. Comprehensive searches typically are performed by third party search providers, and include results from state trademark registries, domain name registries, and other common law usages (i.e., web addresses, phone book listings).

Is Your Trademark Registrable?

The fact that your trademark may be available for use is not a guarantee of registration by the USPTO.

If your mark can be described as either of the following, it may not be registrable:

- Merely descriptive
- Merely geographically descriptive

If your mark can be described as any of the following, it will be denied registration:

- Misdесcriptive
- Geographically misdescriptive
- Merely ornamental
- Immoral, obscene, or scandalous

Registering Your Trademark

If your trademark appears to be available, the next step is to submit an application for registration. Immediately upon submission of the application you will be issued a serial number for your mark. We will then monitor your application as it goes through the approval process.

Approximately six months after the application is filed, it will be assigned to an examining trademark attorney who will determine whether your mark is available and registrable. If the examining trademark attorney identifies any defect in the application, or questions the availability or registrability of the mark for registration, an office action will issue, requiring a response within six months from the date of mailing.

If no defects or questions are raised by your application, your application will be published for opposition in the Official Gazette. During the 30-day period following publication, any person believing that he or she may be damaged by the registration may oppose your registration. If no opposition is filed during this period, a Certificate of Registration will be issued in due course. Once your mark is registered, you must actively maintain your registration.