

# Trademark Basics for Business Owners: What Are Trademarks and Why Should You Care?

Article By:

Kevin Elkins

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As a business owner, you have invested time, money, and effort into creating a brand that represents your company and sets it apart from competitors. Protecting your investment through registering and enforcing your trademark plays an essential role in ensuring your efforts were not in vain. Without proper protection, your trademark, and by extension, your brand, may be vulnerable to infringement or dilution by competitors, resulting in loss of customers, revenue, and reputation. This is the first in a series of articles discussing how business owners can protect and enhance the goodwill developed in their brand.

## What Is a Trademark?

A trademark is a symbol, word, or phrase that identifies and distinguishes your goods or services from those of others in the marketplace. A strong trademark can create consumer recognition, loyalty, and trust. It can be a name, logo, slogan, or any other unique identifier that represents your brand.

(Reg. No. 6,783,025), PEPSI (Reg. No. 5,541,080), and “JUST DO IT” (Reg. No. 4,764,071) are all trademarks that the typical consumer would recognize.

## Use of Your Trademark Confers Basic Rights

The good news for business owners is that you already have some enforceable trademark rights by simply using your trademark in commerce. “Common law” rights are those which arise from actual use of a trademark in commerce. Under the common law, the first person to use a trademark in commerce has the superior right to use that trademark in that geographic area. Importantly, however, common law protection is limited to the geographic area where the trademark has been used. So, if you only sell your products or offer your services in a specific region, your common law protection will only extend to that region. This means that you may only be able to enforce your trademark against another person using an infringing mark within the same geographic area.

## How Can I Get National Trademark Protection?

Aside from using your trademark in all geographies throughout the United States (which is highly unlikely in itself), you can acquire nationwide priority in your trademark by obtaining a federal

trademark registration. Federal trademark registrations are granted by the United States Patent and Trademark Office (the “USPTO”) and provide nationwide protection for your trademark. This means that you can prevent others from subsequently using the same or a confusingly similar trademark anywhere in the United States.

To obtain a federal trademark registration, you must file a trademark application with the USPTO. The application must include a description of the goods or services associated with the trademark and evidence of its use in commerce. The USPTO will examine the application to determine if the trademark is eligible for registration, or whether some other party has prior rights to the desired registration. If the trademark is eligible, the USPTO will publish the trademark in the Official Gazette, giving others an opportunity to oppose the registration. If no opposition is filed, the USPTO will issue a certificate of registration.

In general, the cost of obtaining a trademark registration with the USPTO ranges from \$250-400 per class of goods or services, in addition to any legal fees you may incur in the preparation and filing of a trademark application. Legal fees vary by law firm and are typically based on the attorney’s hourly rate or a flat fee for preparing and filing a trademark application.

## **Why Is Trademark Protection Important?**

Protecting the significant investment in the development of your brand is of utmost importance. As your business grows, your customers will associate your trademark with your products or services, which can help you build a strong reputation. With the proper trademark protection, others will not be able to co-opt your business’s goodwill by using a similar trademark that could confuse your customers. A registered trademark provides the strongest legal protection against the use of similar or identical marks by competitors—including online use in domain names, social media handles, or online advertising—preventing confusion among customers. A registered trademark also allows you to take legal action against counterfeiters who produce fake products using your brand name or logo.

Additionally, a registered trademark or trademark portfolio can be an asset for your business. If you ever decide to sell your business, a strong trademark can increase the value of your company as a purchaser can take comfort in knowing that what it is buying is protectable.

Protecting your intellectual property, specifically your trademark, is crucial for any business. It can help prevent confusion and misrepresentation, create brand value and recognition, prevent infringement and counterfeiting, and protect your online presence. By investing in trademark protection, you are safeguarding your brand and ensuring its long-term success.

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