

## Trademark Development and Registration

A trademark is a word, symbol, design, graphic, slogan, or combination thereof, that identifies and distinguishes products or services for consumers. The process of creating, registering, and protecting your trademark can be challenging, but it is critical to the future of your small business.

### STAGE 1 -- CREATION

When creating a trademark for your new company or product, there are many important factors to consider. It is critical that the mark be distinctive, and you should avoid generic, descriptive, and/or misleading terms. Using a person's name can cause problems, and beware of how a name might translate into a foreign language, especially if you may expand into foreign markets. For example, the car name Nova translates as "no go" in Spanish. Legal counsel can provide critical guidance as to how to make your trademark distinctive and increase its strength, while avoiding conflicts with prior users of similar marks.

### STAGE 2 -- CLEARANCE

It is critical to research a prospective trademark prior to use, to make sure that nobody is currently using the marks, or a similar mark. If your mark is similar enough to a trademark used by a prior user, you can be sued for trademark infringement, and forced to cease using the trademark. A trademark clearance search is used to determine if there are any prior users that might cause a problem, either now or in the future.

The importance of this step cannot be overstated. Every year many start-up companies go bankrupt following trademark litigation that could easily be avoided with proper research. This often follows years of initial work and growth, because the problems only become apparent once the new company grows large enough to attract the attention of larger companies.

### STAGE 3 -- OPINION

An experienced attorney can render an opinion as to the availability of your potential trademark for use and registration, once the clearance search has been completed.

### STAGE 4 -- REGISTRATION

To lock in your protection for your selected trademark, it is highly advisable to register the trademark with the United States Patent and Trademark Office (USPTO). Once an application is filed, a Trademark Examining Attorney conducts research to determine if your proposed trademark is confusingly similar to any trademarks already registered. If no conflicting trademarks are found, and if your trademark is found to otherwise qualify for registration, your trademark is published for opposition in the USPTO's Official Gazette, and finally registered.

Failure to follow these steps can, and very frequently does, lead to catastrophic consequences, including major lawsuits and the bankruptcy of the start-up company. It is highly advisable to seek experienced legal counsel to assist you in this process.

A few critical final points:

- (1) Creating a trademark that is distinctive, and capable of protection, is essential, and should be done only with consultation with an attorney with significant experience in the field. Don't spend your next 5-10 years building a mark that cannot be protected and enforced, otherwise you will be knocked off as soon as you achieve strong sales. Also, a strong mark can add millions to the final valuation of your company, if your company is ever acquired.
- (2) Trademark clearance searches are extremely difficult and subjective, and brief "screening" searches, or "exact mark" searches, are simply not enough. Don't build a mark that leads to a trademark infringement lawsuit.