

## Trademark Basics

### What is a trademark?

A trademark is what identifies a business, and distinguishes it from other similar businesses. A trademark can be a word, symbol, design, phrase, or even just a color. A trademark is anything that distinguishes goods or services as coming from a particular business or source.

Brand names, slogans, and logos are all examples of trademarks. If your business provides a service instead of goods, these same identifying marks are known as “service marks.” A trademark can be registered with the Federal government, the State government, or not at all. Each of these registration options provides different protections and rights.

### Do I need a trademark?

Trademarks identify a business to potential customers, and help a business brand itself. Branding a business is important to establishing a foothold in any market. Business owners benefit greatly from having a trademark that customers can identify, and trademarks can eventually become valuable on their own. However, not all trademarks are eligible for protection by the USPTO or the State of West Virginia. It is important for you to determine whether your brand can be protected during the early stages of starting your business.

### How do I get a trademark?

A business obtains rights over a trademark simply by using the trademark. In other words, you do not have to register a trademark in order to have rights to use that trademark, and to protect it from use by others. This is what is known as a “common law” right to use the trademark. However, “common law” trademarks have the least amount of protection. For that reason, it is a good idea to obtain proper registration of your trademark, with either the State or Federal trademark registration system. Registration gives you specific protections against other people trying to copy your brand.

### Choosing between State and Federal registration

In most cases, it is better to register your trademark in the Federal system, through the United States Patent and Trademark Office (USPTO), because Federal registration provides far more protection than State registration. State registration only protects your trademark within the State—it cannot prevent someone else from using your mark outside of West Virginia. State registration establishes a date when you started using your mark, and lists you in the database to serve notice of your ownership and use of the mark in the State. The application for State registration is cheaper and usually processed more quickly than the Federal application.

Federal registration provides nationwide protection of your mark, and allows you to file trademark infringement lawsuits in Federal court if necessary. If someone already registered your mark in Kentucky before you registered the same mark in the Federal system, you would still be able to use the mark everywhere other than Kentucky. If you registered your mark Federally first, then you can stop anyone from trying to register it Federally or in a specific State. Federal registration also allows you to use the ® symbol, indicating you have a registered trademark (State registrations only allow you to use TM or SM marks). Furthermore, once you have a Federal trademark, you can register it with the U.S. Customs and Border Protection Service to prevent infringing or counterfeit products from being imported.

### Do I need a lawyer?

In short, yes. A lawyer can help you decide whether you should register with the State, or with the USPTO. A lawyer can also help you perform searches of the databases to make sure there is not a conflicting trademark already in use. Though the search sounds simple, it can be very complicated and technical, not to mention that it costs you money to conduct the search with the State. The application process can also be complicated, and a lawyer can help you perfect your application before you spend money applying. Please contact the Entrepreneurship and Innovation Law Clinic at the WVU College of Law for any questions, or for help applying for a trademark. Librarian Marian Armour-Gemmen at the WVU LaunchLab on the Evansdale campus can also help you conduct a search of both the State and Federal systems.

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