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DBAs, TMs & .coms

By Elena Fawkner

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"... I'd like to register my business name with the proper town authorities as a sole proprietorship. To protect myself and my business name from being copied and altered, do I have to register any and all variations of the name? And is this done separately or is it done under the one application? ... Is this what I need to do in order to stop anyone from using a variation of my business name? And can my business name be trademarked along with its variations?"

This question (an extract from an email I received from a new subscriber during the week) is a good illustration of how confusing the purpose of and difference between business names and trademarks can be for small business and others without ready access to an army of lawyers to lead them through the maze. Add your domain name to the mix and it becomes as clear as mud.

In this article, we'll look at what business names, trademarks and domain names are (and aren't), what you can and need to do to protect them and issues to think about when deciding upon what to choose for your business and domain names and whether trademark protection is appropriate (or even possible).

YOUR BUSINESS NAME

If you're going to conduct your business under a "fictitious" name, i.e., one other than its legal name, you will need to register the fictitious name with the appropriate government agency in your state. This usually means your local county recorder's

office but, depending on where you live, it may mean your state's Secretary of State Office. In countries other than the U.S., the appropriate body may be some sort of government Department of Small Business.

So what's your "legal" name? If you're conducting business as a sole proprietorship, your legal name is your name, i.e. Fred Smith. If you're any sort of other legal entity such as a corporation, limited liability company, limited partnership etc., the legal name of your business is the name of your corporation, company, or limited partnership.

If you conduct business under your own name or that of your corporation, limited liability company or limited partnership, you do NOT need to register a fictitious business name with the State because you are not conducting business under a fictitious name, you are conducting it under your business's legal name.

=> Legal Purpose of a Fictitious Business Name

The reason you must register a fictitious business name to operate a business under a name other than your business's legal name is to protect the consuming public – those members of the public who come in contact with your business – as well as other parties such as suppliers.

The purpose of registration is so that those who deal with your business can search for and identify the person(s) "behind" the name. As a fictitious business name is not a legal entity, it does not have contractual capacity (i.e. it cannot enter into contracts in its own name). A consumer wanting to do business with your business needs to be able to verify that the person with whom he or she is contracting has authority to enter into the contract as the business entity. By searching the fictitious business names register, the consumer can find out who is "behind" the business, as that is the party with whom he or she will be contracting (and, sometimes, suing if the transaction goes bad!).

Example: Alfreda Smith conducts her florist business under the registered fictitious business name, "Blooming Right". Florist Supplies, Inc. wants to enter into a contract with Blooming Right to supply Blooming Right's stock of tulips. As Blooming Right is not a legal entity and only a DBA ("doing business as", another

term for a fictitious business name), Blooming Right does not have legal capacity to enter into the supply contract with Florist Supplies, Inc.. (Florist Supplies, Inc., of course, being a corporation – as evidenced by the "Inc." – is a legal entity, and therefore has contractual capacity.) For this reason, Florist Supplies, Inc. will only be prepared to contract with Alfreda Smith, the legal entity behind Blooming Right. Florist Supplies, Inc. identifies the legal entity with contractual capacity by searching the fictitious business names register. Accordingly, the supply contract finally entered into will be between Florist Supplies, Inc. and Alfreda Smith, d/b/a Blooming Right.

You should also know that you won't be able to open a bank account for your business unless and until your fictitious business name is registered with the state.

Just because you've registered your business name in your county doesn't mean that someone else can't register the same business name in another county. Registration is only designed to allow people who deal with your business to identify you as the person behind that particular business. It doesn't give you exclusive use of that name for all purposes in all areas. For this reason, if your business name is also your business's "brand", you should also register it as a trademark, if possible.

TRADEMARKS

As is evident from the purpose of registering a fictitious business name, a business name is NOT a trademark and a registered business name will generally NOT operate to protect the name from use by others (except as an identical or deceptively similar business name in the same county). So how do you protect your business's "name" if it also identifies and distinguishes the source of your goods or services from those of your competitors'? The answer is federal trademark registration. (Although you can also register trademarks at the state level, state registration confers only limited benefits and should be considered only if federal registration is not possible).

=> What is a Trademark?

As suggested above, a trademark is either "a word, phrase, symbol or design, or combination of words, phrases, symbols or designs, which identifies and distinguishes the source of the goods or services of one party from those of others."

(http://www.uspto.gov/web/offices/ac/doc/basic/basic_facts.html)

A service mark is the same thing except it relates to the source of a service rather than a product.

=> Registration Not Required

A trademark (or service mark) does not need to be registered to attain status as a mark i.e. unregistered trademarks are recognized by the common law. If you have used a distinctive trademark (that you own) in commerce, then you probably have a common law trademark already.

But registration confers benefits not available if you rely only on your common law trademark rights, such as the presumption that you are the owner of the mark for the goods and services specified in the registration and the entitlement to use the mark nationwide.

Absent federal registration, you would have to prove these things in court as preliminary questions of fact. Imagine trying to satisfy a court that you are entitled to exclusive nationwide use of the mark

if you've only been using the mark in two states. Other benefits of federal registration include: (a) the fact that registration acts as constructive notice of your claim to the mark; (b) federal court jurisdiction can be invoked; and (c) registration can be used as a basis for obtaining registration in other countries.

=> What Can Be Trademarked?

It may be easier to answer this question by looking first at what cannot be trademarked. The U.S. Patent and Trademark Office (PTO) won't allow you to register a mark that is not distinctive (discussed below); that is already in use or that contains names of living persons without their consent; the United States flag; other federal and local government insignia; name or likeness of a deceased U.S. President without the widow's consent; words or symbols that disparage living or deceased persons, institutions, beliefs or national symbols and marks that are judged immoral, deceptive or scandalous.

=> Distinctiveness

As a general rule, a trademark must be distinctive in order to be accepted for registration. This is an enormously complex issue in trademark law and beyond the scope of this article.

But for our purposes, just keep in mind that a mark that is in ordinary or common usage in the community will not be capable of registration because no one person can be said to be the "owner".

For example, let's say your business is selling still life paintings. You would have trouble registering "Still Life" as a trademark because it is a term in common usage and has a general meaning in the community. (Note though that certain types of marks while not distinctive YET may become so in the future, i.e. they are capable of acquiring a secondary meaning. Such marks may be eligible for registration and limited protection on the supplemental trademark register. For more on this, consult your attorney.*) (On the other hand, you may well be able to register the name Still Life as your fictitious business name provided the same or a deceptively similar name is not already registered in your county.) In order to maximize the chances of your trademark being accepted for registration, therefore, try to come up with a "coined" or "fanciful" name. The example often given by trademark lawyers of a particularly successful coined name is Kodak. It's a name that means nothing apart from its association with cameras and now expanded lines of products but is immediately identifiable by anyone who sees it as a trademark of the Eastman Kodak company.

So, the more novel, unique and fanciful the name, the more likely you will be able to register it federally.

DOMAIN NAMES

So, how does your domain name figure into all of this? In particular, what is the interrelationship between registered trademarks and domain names?

=> Domain Names VS. Trademarks : David VS. Goliath

As a general rule, as the law presently stands, it is *possible* to register any domain name that isn't already taken without regard to whether that name is a trademark owned by a third party. *But do so at your peril*. Courts are increasingly siding with trademark owners against domain name holders even when the domain name holder acquired the domain name with perfectly innocent intentions, i.e. with no intention of infringing on the trademark or holding it for ransom (cybersquatting).

=> Domain Names AS Trademarks

Let's say that the domain name you want to use is not already a trademark. Can you register it as a trademark? Depends. Maybe.

A distinctive, coined domain name may well be capable of trademark registration for the reasons discussed above. An example is my own domain, ahbbo.com. The word "ahbbo" has no common, ordinary meaning and so would most likely be capable of being registered as a federal trademark. If I tried to register the trademark "A Home-Based Business Online" I would have trouble even though I own that domain name because the words are, in one variation or another, in common, ordinary usage.

To be registrable, however, the domain name must act as a source identifier for the product or service offered by the business (simply because ANY trademark must identify and distinguish the source of the product or service), and not merely act as an address used to access a website.

SUMMING UP

Let's go back now and answer the original question:

"... I'd like to register my business name with the proper town authorities as a sole proprietorship. To protect myself and my

business name from being copied and altered, do I have to register any and all variations of the name? And is this done separately or is it done under the one application? ... Is this what I need to do in order to stop anyone from using a variation of my business name? And can my business name be trademarked along with its variations?"

=> "To protect myself and my business name from being copied and altered, do I have to register any and all variations of the name?"

No. The question misconceives the function and effect of a fictitious business name. The only function of the registered business name is to allow the consuming public and others, such as suppliers, to ascertain the legal entity behind the fictitious business name. It is not the business's name that

requires protection from being copied and altered, it is the business's trademark(s). If you are looking to establish a "brand" with your business name, make sure the name is the same as your trademarks and register your trademarks.

=> "Do I have to register any and all variations of the name?"

This was asked in the context of the business name. For the reason just given, the answer is no. But for the purposes of our trademark analysis, let's reframe the question. Is it necessary to register any and all variations of the trademark?

No. Once you have federal trademark protection for your mark, the trademark examiner will (in theory, at least) not allow anyone else to register a mark that is identical or deceptively similar to your mark.

Make Money From Google Or Yahoo. P/T

By Conrad Sear

This is how I make money part time. I created my own network over the course of 6 months. Creating web site after web site. On each one of these web sites I add advertising. Small unobtrusive ads. I add banners from affiliates & traffic programs & viral programs.

It all sounds simple so far, right?

Well, it is. Until you go to your accounts & check for balances. You find you are not making what you thought you would. You may even say "why did I bother."

This is all okay. We all go through this. This is the learn curve. Easy money really only comes after you have the knowledge & experience. Stumble 100 times, hit the big one once.

This is how it worked for me. Follow some rules & facts.

Facts:

1. websites take time to build popularity by search engines.
2. you must Search engine optimize your keywords & content.
3. read, study, learn from others.
4. you don't have to spend a lot of money on promotion.
5. find solid proven programs to build from first, then add your ideas & make it more of your own.
6. most everything is free on the internet, find it!

Rules:

1. The web doesn't care who you are!
2. Search engines only care about the balance between

content, keywords, link popularity, traffic, and relevance. 3. 80% of your traffic will come from search engines. 4. it's a numbers game. The more traffic to your site the more likely to convert sales, clicks, & sell advertising space. 5. MORE IS BETTER. Make multiple web sites. Have lot's of content. Link to thousands of sites.

Take all of this & go sign up for Google AdSense & Yahoo Publisher and anyone else you can. You should have multiple rivers of revenue. DON'T put all your eggs in one basket. Having multiple AD revenues will greatly expand your base.

Google pays best right now. Yahoo is good. Affiliate programs are subjective. You must fine tune & match relevant content. But they work.

These are the basics. Now go out there & find your niche. Over time you will have built a tiny empire.

Conrad Sear has been a web developer for 14 years. He now manages a startup SEO company called

<http://TrafficXTC.com>

. Their growing list of clients are all making to the top with his guidance.

Samples—(

<http://easyincomeinfo.com>

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