

**DIVIDENDS**



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**“That’s Not Me”: Trademark Identity Theft**

**By: Jack Santaniello**

So you’ve spent years creating, designing and using the perfect words, designs and symbols to represent your business. While Googling, Facebooking, E-Baying, or doing something else in front of a computer or television screen, you happen to notice your business logo on the screen. As you look closer, you realize it’s not your mark, but something that looks like it. What do you do?

Businesses are identified by their brand – the words and symbols linking certain products or services back to a business. Many business owners gloss over the true value of their marks and, therefore, do not pay much attention to protecting them. According to the United States Patent and Trademark Office (USPTO), intellectual property theft causes losses to businesses estimated to be in excess of \$250 billion dollars per year and 750,000 lost jobs annually. Trademark protection prevents others from profiting off of the brands and goodwill businesses have developed for themselves.

Many business owners assume that merely creating a new business entity in their respective states is legally sufficient to provide trademark protection for that name. These business owners many times find out the hard way that this is not the case and that they should have filed a registration application. In some cases, mere usage of a mark provides very limited trademark protection. However, filing for federal or state trademark protection is significantly more effective and, therefore, worth your consideration. While few business owners choose to file their trademark applications on the state level, most file on the Federal level with the USPTO to obtain a broader geography of protection.

The keys to protecting your marks are: monitoring your marks in commerce, pursuing true infringers, and maintaining the trademark registration. Much of today’s intellectual property theft occurs in electronic format. So monitor the Internet for potential infringement by doing occasional searches for your trademark. But don’t forget to also monitor paper publications such as trade journals or other industry-specific materials as well. When encountering a potential infringer, you need to make sure that it is a true infringement. Keep in mind that a business with the same name can exist if such business sells goods or services which are completely different from yours. If it is a true

infringement, you need to take action to put the infringer on notice. This typically occurs in the form of a cease-and-desist letter. If nothing else, such a letter may open a channel of communications to resolve the situation amicably. If the letter does not fix the problem, you need to decide how far and how hard you are willing to pursue the infringement, i.e. how much of your time and money you are willing to spend on this problem.

Trademark registration is maintained through usage and by making certain post-registration filings. While the initial Federal registration term is ten years, you must file proof of continued use between the fifth and sixth year after registration is granted. The ten-year term may be renewed for another ten years provided you file an application for renewal between the ninth and tenth years from the date of initial registration.

As your business evolves, so may the words and symbols representing your business. The trademark registration protects the mark as it was originally registered. If you modify the mark over the course of time, you will need to file new applications.

If you are serious about protecting your business assets, don't forget about one of your most valuable ones – your identity, your trademark.

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