

# Trademark tips

## How to protect your trademark online

**T**rademarks are the face of a company and its products and services.

Customers rely on trademarks when making purchasing decisions — associating a mark with a certain quality. People often confuse trademarks with patents and copyrights. While copyrights protect the expression of ideas and patents protect inventions, trademarks are words, designs or symbols that identify and distinguish the goods of one source from another.

“A trademark represents a company’s goodwill, essentially a company’s reputation, and allows a company to distinguish itself from competitors,” says Alexis Dillett Isztwan, member at Semanoff Ormsby Greenberg & Torchia, LLC. “That’s why it’s so important for a business to invest in the protection of its trademarks.”

*Smart Business* spoke with Isztwan about trademarks and protecting brands online.

### How has increased social media usage impacted how companies brand themselves?

Social media gives companies a platform to build brand recognition and loyalty. A trademark is a critical piece of establishing a brand identity. However, there are a number of risks and pitfalls. On social media, mistakes can be disseminated and amplified quickly. Blunders are posted, Tweeted about and mocked on YouTube. Damage to a company’s brand can happen in a heartbeat on social media. Prior to the advent of social media, businesses had the luxury of time to fix mistakes before hard-earned reputations were undermined by a post gone viral.

### What advice would you give about obtaining a trademark for a company name?

Company names are often used as trademarks and should be protected as marks not simply registered with the state

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as a corporate name. Limited rights in trademarks arise from use in commerce. However, federal registration provides national protection and the strongest protection for your mark in the U.S. Distinctive trademarks are stronger and more protectable. Companies shy away from adopting unique marks opting for marks that merely explain to consumers what the business does. Not only are descriptive marks unprotectable, they fall short of what a business should strive for in its mark — setting itself apart from the competition. Finding a unique mark is difficult, so it is essential to perform a thorough search before launching a mark in commerce or applying for a registration.

### How should brands be protected online?

Once a business settles on an available trademark and files a federal application, several additional steps are worth taking. Use the mark consistently in commerce. Obtain domain names and social media tags not only for the trademark but also derivatives of that mark. Use proper trademark notices: <sup>TM</sup> for marks in use but not registered and <sup>®</sup> for registered marks. Proper notice alerts third parties of your rights and provides additional protections. Monitor use of your mark: supervise licensees to ensure proper use of the mark; keep an eye on use of the mark online — sign up for programs like Google alerts, and

pay attention to social media sites that your customers might frequent like Facebook, Twitter and YouTube.

### How is trademark infringement different on social media and the Internet?

Trademark infringement is infringement — on- or off-line. Certain types of misuse are unique to social media and the Internet including cybersquatting, phishing, brandjacking, and misuse of meta tags. Infringers have many options on the Internet and social media to benefit from the goodwill of established marks, and often are able to do so anonymously. Trademark owners struggle to mitigate damages resulting from the infringement while not knowing who the perpetrator is. Courts will sometimes help identify an infringer, but filing suit can be costly and distracting.

Another tricky facet of infringement on social media and the Internet is determining whether the unauthorized use satisfies the ‘use in commerce’ requirement of an infringement claim. In a brandjacking case, imposters may not be using the mark in connection with the sale of goods — while the damage to the business’s reputation is the same, the unauthorized use may not constitute trademark infringement. Adopting a strong mark and vigilantly monitoring usage of and enforcing rights in a mark are critical elements to protecting a company’s mark, and reputation, online. ●