

# Trademarks

## Trademarks, service marks and domain names

### What is a "trademark?"

A trademark is any name, symbol, figure, letter, word, design, phrase, slogan or mark adopted and used by a manufacturer or merchant in order to designate goods and to distinguish them from those made or sold by others.

A service mark is a trademark for a company that provides services rather than goods. The word "trademark" is often used to refer to both trademarks and service marks.

Businesses often use their trademarks as part of their domain names-the "address" by which they can be located on the Internet. We've got a page about our domain work here.

### What can serve as a trademark?

Virtually anything that can act to distinguish one entity's goods or services from those of another can serve as a trademark. For example:

- Business names: Apple, Microsoft, McDonald's, Schwinn.
- Product names: "iPhone" for phones, "Big Mac" for burgers, "Les Paul" for guitars.
- Logos: McDonald's golden arches, Nike's swoosh, Target's bullseye.
- Slogans: Capital One's "What's in your wallet?" M&M's "Melts in Your Mouth, Not in Your Hands,"

Donald Trump's "You're Fired!"

- Sounds: Law & Order's "Chung Chung," The NBC Chimes, the 'Yahoo!' yodel, the University of Arkansas's "Hog Call" ("Wooooooooooo. Pig. Sooie!")
- Colors: UPS -Brown, John Deere tractors-Yellow and Green, Owens-Corning insulation-Pink
- Even more unusual distinctions:
  - goats on the roof serve as one restaurant's trademark;
  - trash cans shaped like fire hydrants are service marks for a hot dog restaurant; and
  - the scent of plumeria (also known as frangipani) is the trademark for a type of embroidery thread.

## What is a "common law trademark"? How are trademark symbols used?

You acquire common law trademark rights by regularly using your business name, product name, tagline, logo, etc.-even if you have not registered your trademark/s. If your trademark is not registered, you can still use a symbol to indicate that you are claiming it: either "TM" or "SM" (in a circle, or not-your choice). "TM" is used for either goods or services. "SM" is only used for services-not for products.

## What is a "registered trademark"? Why register my trademark?

A registered trademark is one that has been recorded with the trademark office of a nation or state.

In the United States, "registered trademark" refers to marks registered with the United States Trademark Office. Once registered, trademark owners can use the federal registration symbol, "®," next to their mark. (Using that symbol for unregistered marks is illegal.)

Registering your trademark gives you important advantages, including these three:

- Nationwide notice to the public of your claim to own the mark (so third-party claims that their infringement was "innocent" usually won't fly, and if you must sue, you will be entitled to get damages from the start of the infringement).
- A "priority date" for first use of your mark, nationwide, as of the filing date of your application. (In

other words, anyone who starts using a confusingly similar mark later than that date will be subject to your own rights, and you most likely will be able to make them stop.)

- A legal presumption that you have the exclusive right to use this mark, nationwide, in connection with the goods and services listed in your registration. (If you have to sue anyone, your right to enforce your trademark is presumed, without requiring you to first provide evidence that it's an enforceable trademark.)

## Why Olive & Olive for trademarks?

Olive & Olive opened the first trademark practice in the Research Triangle area of North Carolina. Today we actively manage more than twenty-four hundred client brands-not just words, but everything from bottle designs to visual images and domain names, and from business brands to university and tribal logos. From the moment a client considers a new business or a new product line or service, we are there.

## Our trademark savvy lawyers maximize your chances for successful trademark registration-

Trademark registration is complex with strict rules, but we guide you every step of the way. Our highly experienced trademark team knows how the system works, helping you avoid the pitfalls, and assisting you in presenting your trademark application in the best possible form to the Trademark Office of the USPTO.

## We care about your good name-

Trademarks are important assets-the essence of your good name. Brand recognition and advertising drive sales. Olive & Olive partners with you to help you achieve your business objectives. We protect and defend intellectual property assets like trademarks and counsel clients from diverse industries on essential business matters including:

- Selecting and evaluating names and marks for maximum impact, enabling you to develop a brand that consumers will identify with, recognize and remember.
- Protecting all of your intellectual property assets -if infringement occurs or is threatened, we offer experience in the Trademark Office's opposition and cancellation procedures, domain name

resolution, mediation and other alternative dispute resolution processes, as well as litigation.

- Counseling on trademark issues in advertising, sweepstakes law, and cyber law.
- Managing your trademark portfolios worldwide, if your business is international.

**Your trademarks are vital assets that grow your business, distinguish your brand, and bolster your reputation. We treat trademarks with the respect they deserve. Olive & Olive combines high-powered legal expertise with incisive business sense, all the while keeping the focus on your bottom line.**