

ELG's Practical Guide to

# TRADEMARKS

for the  
Cost-Conscious Entrepreneur

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# ELG'S PRACTICAL GUIDE TO TRADEMARKS

FOR THE COST-CONSCIOUS ENTREPRENEUR

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## WHAT'S IN A NAME?

Choosing a name for a new product or service can be a bit like choosing a baby name. You want to get it just right. However, unlike people names, you must be creative choosing a trademark. Collectively, names and brands and tag lines and symbols are all variations of the form of intellectual property known as trademarks.

Trademarks serve as symbolic receptacles for all the good will that people hold for a mark's owner. In a way, trademarks are kind of like hyperlinks. When you see (or touch or hear) a trademark, your mind is magically transported to the organization to which it is affiliated.

For these reasons, trademarks can become exceptionally powerful tools and assets to any organization. So it is important to make wise trademark choices.

## CHOOSING WISELY

Good trademarks are distinctive. They are unique in their field. A good trademark will not cause confusion with anyone else's trademark in the

### DID YOU KNOW ?

A trademark can become your most valuable intellectual property.

relevant marketplace. And a good trademark does not merely describe features or qualities of the product or service with which it is used. SOFT would not be a good trademark for a company that sells pillows, because the word SOFT describes a quality of the products.

Before settling on a trademark for your product or service (or organization), be sure to diligently research existing trademarks. If you find an existing trademark is similar, and a reasonable person would say there is a chance customers might be confused, look for a different trademark.

Seriously consider hiring a trademark attorney to make a comprehensive clearance search for you. It is unrealistic to expect that any average internet search can tease out all the look-alikes, sound-alikes, and other permutations necessary to make a proper clearance search.

**WARNING!** Registering your business with the state offers no assurance whatsoever against trademark infringement.

## REGISTER YOUR TRADEMARK ... MAYBE

After completing the clearance research, think about filing an application to register the trademark. (Usually, it is not a good idea to file before researching – you could accidentally provoke legal action by someone who feels threatened by your trademark claim.) Filing a trademark application is best left to the professional trademark attorney. The average total cost to register a trademark in the U.S. is about \$2000-2500 in 2019 (1 class). The process of examination and registration takes, on average, about a year to complete.

Trademark registration provides several important (but not essential) advantages. Advantages of registration include: statutory presumptions of validity and incontestability, presumed nationwide constructive use of the trademark; the ability to seize imported goods bearing the registered mark, and the availability of many civil and criminal counterfeiting provisions. However, there are times when not applying to register a trademark is the more sensible choice. Every situation is a little different, and that is why it is prudent to work with an experience trademark attorney.

## BE VIGILANT

Trademark owners must always be ready to defend their trademarks against infringers and misusers, or risk losing trademark rights.

Over time, a trademark can become your most valuable intellectual property. Exercise care and prudence when selecting new trademarks, and then registering them, so that you will be in a position to reap the dividends for a long, long time to come.

*Note: This Guide is provided for educational purposes only and must not to be considered legal advice.*



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