

**TRADEMARK PLANNING, REGISTRATION AND
POST-REGISTRATION CONSIDERATIONS:
WHAT EVERYONE SHOULD KNOW**

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This article should not be utilized as a substitute for professional service in specific situations or to provide legal advice. This article is intended to provide general information about certain aspects of trademark law. Since the law changes over time, questions about individual problems should be addressed to the attorney of your choice.

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The purpose of this article is to provide a general understanding as to what trademarks are, what they are not, and how they can be protected. The analysis contained in this article is limited to use of marks in the United States. The United States is a use-based country, and unlike several other countries, rights in the United States are gained through usage, rather than registration. Registration, however, does have several benefits, which are discussed in this article.

What is a Trademark?

A trademark, quite simply, is a word, symbol, sound or other device which identifies a good and to which a consumer attributes a specific source of supply. A service mark is the same as a trademark, but rather than the source of goods being identified, the word, symbol, sound or device identifies the source of a particular service. Trademarks are not copyrights, which are rights that attach to original works of authorship reduced to tangible form; nor are trademarks patents, which are statutory rights of exclusive use granted for certain original inventions.

Developing a Trademark Business Plan

For many companies, name recognition is everything. These companies' trademarks, service marks and associated trade dress are jealously guarded, and rightfully so. All too commonly, an individual or business will commence usage of what it believes to be a viable trademark without first researching either the availability of that mark, or its protectability. A failure to consider either one of these issues can have disastrous results: at best, you've spent a lot of money on promoting a mark that has no economic value; at worst, you've stepped on the toes of a competitor who has been using the same or similar mark covering the same or similar goods or services for a significant amount of time prior to your usage, and you have now been sued for infringement.

In choosing a mark, generic or descriptive terms must be avoided. Generic terms are not subject to protection under the trademark laws, and descriptive terms are only protectable under limited circumstances. Specifically, choosing a name that is merely used to identify your product or service (and spending money on marketing the chosen name) is unwise because the law does not prevent the use of these generic terms by third parties. For example, use of the term "The Door Store," if your company sells doors, would not be protectable. Similarly, attempting to identify your services with the phrase "Carpet Cleaners of the Midwest" would likely not be protectable, if, in fact, your company provides carpet cleaning services limited to the Midwestern geographic region. Unless descriptive terms have attained what is commonly referred to as

