

What's The Difference Between Trademark vs. Brand? Everything You Need To Know

What is a Trademark vs. Brand?

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One of the most common questions asked is, "What is the difference between a [brand and a trademark](#)?"

To put it simply, your [brand](#) is what represents your business's reputation to the public, and your trademark is what protects the attributes of your brand from a legal standpoint.



Oftentimes, the terms "trademark" and "brand" are used interchangeably, but this is not accurate as each has very important distinctions.

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Alex R. Sluzas, Esq.

One way to remember the difference between the two is that all trademarks are brands, but not all brands are trademarks.

Trademarks can legally protect specific phrases or words that are important to your brand, such as your slogan. They can also be trade dress, which refers to the artistic

elements that make up the image of your product or service.

Why is it Important to Know The Difference?

Your brand and trademark each have its own unique benefits.

Your brand is your corporate image, and it can change and build over time while maintaining the reputation of your business.

Your trademark provides your brand with legal protection and is granted to your business by the Trademark and Patent Office.

Your brand is what helps consumers identify your company along with its services and or products, whereas your trademark helps protect your brand image from competitors.

A brand consists of several elements, including:

Image
Character
Identity
Personality

Essence
Culture
Reputation

These elements combined define the value of a brand in the industry.

And, if a brand is not trademarked or registered, the elements that make up the brand are free to be used by other people, without the threat of penalty. On the other hand, if the brand is trademarked or registered, unauthorized use can result in severe penalties.

The brand name is chosen by the business on how it would like to be identified. Trademarks, which are sometimes called “service marks,” carry legal weight and protect the business and its services and products.

A trademark can be used to protect various aspects of a brand, including:

Brand name
Signatures
Words
Unique labeling
Color schemes
Packaging
Movements
Sounds or sensory experiences

Trademarks protect elements that are uniquely identified with the brand, which is why it is most common for trademarks to be associated with brand names.

The History of Trademarks vs. Brands

Branding dates all the way back to the days of the ancient Egyptians when one person would want their cattle to be differentiated from another person’s cattle.

Now, we’re familiar with so many brand names and discuss many on a daily basis. Between Apple, Target, Nike, etc., there’s too many even to count.

These names are so dominant in the marketplace, that if they didn’t have any legal protection over their brands via trademarks, they would be vulnerable to other brands copying their characteristics without penalty.

And, it's not to be mistaken- while big business names are vulnerable to misuse, small businesses are just as well.

Reasons Why You Might Not Register For a Trademark

As you may realize by now, a trademark or service mark (the latter referring to protection of services rather than goods) is imperative to businesses looking to protect their brand from misuse.

These marks can stop unauthorized use of your brand, and also prevent others from creating brands similar to yours in an attempt to trick patrons into buying from them, which is known as “brand confusion.”

As mentioned earlier, trademark protection is automatic- however, if an instance occurs where you might need to sue someone, the responsibility will fall all on you to prove that the mark was, in fact, yours first.

To avoid this complication, you may want to register for exclusive rights to your trademark with

the USPTO (U.S. Patent and Trademark Office), in which case, you would then be authorized to signify this by using the ® following your trademarked device.

How do I File a Registered Trademark?

If you do decide to register for a federal trademark, it can be done through the United States Patent and Trademark Office. Typically, you will need to file separately with each country where you want protection over your trademark.

Before filing for trademark registration, you will have to ensure that the mark you are registering represents something unique and distinctive to your brand. For example, the business name "Jason's Grocery Store," could potentially be eligible for trademark, but the word "grocery" or "store" will not.

After that, you will have to conduct research to ensure that there isn't a mark already filed that is significantly similar to the one you are trying to register for. It's important to remember that a trademark only protects your device over similar use. You will need to research the 45 different classifications of businesses (which is called the Nice classification) and choose which is the appropriate one to file under.

This is helpful because while your trade name might already be filed and used for a business, you could potentially still have fair use to it if it's an entirely different business industry.

Once you have determined that your official name is unique, distinctive to you, and not already taken, you will then be able to file the proper paperwork according to the USPTO, who will then do research on their own. The USPTO may have follow-up questions regarding your mark, your intended use for it, your business, and if your mark is potentially too closely similar to another name of a company.

Legal Help With Trademarks, Copyrights, and Patents in Philadelphia

Trademark law, along with the entirety of intellectual property law, can be a complex matter to understand, but you don't have to tackle it all on your own. Seeking legal counsel from a law firm that specializes in intellectual property law can be fundamental to your case, and can be an extreme help throughout the registration process.

If you need help with copyright protection, patent registration, or trademark registration, or just looking for a bit of legal advice, contact the intellectual property attorneys at Paul & Paul today at (866) 201-8191 for a free consultation.

About Paul & Paul

Paul & Paul is one of the leading Patent Law firms in the greater Philadelphia metropolitan area. Our attorneys have the experience before state and federal courts throughout the United States, including the U.S. Patent and Trademark Office, the U.S. Copyright Office, the U.S. International Trade Commission, and the U.S. Federal Trade Commission.

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Alex R. Sluzas, Esq.

Paul & Paul Intellectual Property Attorneys

215-568-4900

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