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Frequently Asked Questions: Trademark

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Q: What is a trademark?

A: A trademark can be anything—a word, phrase or symbol—that identifies a person's goods and services to the public. It may consist of sounds, colors, shapes or other elements. It may include the distinctive presentation in which a product is "dressed up," i.e. packaging, labeling, product design, and configuration.

Q: What should I be aware of in selecting a trademark?

A: You should select a new trademark carefully. Generally, the more the mark is unique, and the less descriptive it is of your product or service, the higher the level of protection afforded. For example, the mark "Toby" is a stronger mark than "Quickclean" for cleaning services because "Toby" does not describe cleaning services while "Quickclean" does. Importantly, do not select a trademark that is substantially similar to another person's existing trademark as applied to goods or services similar to yours.

Q: Do I have to register my trademark in the U.S.?

A: No. A trademark can exist without registration. However, registering your mark at the state or federal level provides several advantages which become vital if your mark is infringed or used by another.

Q: How do I protect my trademark in the U.S.?

A: You can register your trademark with the federal trademark office if your trademark is used in interstate or foreign commerce. If your trademark is used only within one state, then you can register your trademark with the appropriate government office in that state. You can also enforce trademark rights by challenging other parties who infringe or dilute your trademarks. You can apply the symbol ® to your trademark if it is registered federally, or use the symbol TM with the trademark if it is not registered federally. Many businesses neglect these steps.

Q: How can I register my trademark?

A: A trademark can be registered with individual states, with the U.S. Patent and Trademark Office (USPTO) or with foreign trademark offices. The benefits and protections vary, and an analysis of the use of your mark is recommended before filing. Your trademark may qualify for foreign registration either directly with a foreign government or through procedures established via international treaties.

Q: Do I need to conduct a trademark search before filing my application?

A: Although a search is not required, it is strongly recommended that a comprehensive search be undertaken before any trademark is first used, and before it is submitted for registration. A search helps to determine if a trademark is available for use or is already in use or registered to another owner. A search may provide guidance in modifying your trademark if a conflict is discovered.

Q: How long does it take to register a trademark with the USPTO?

A: Generally, a U.S. trademark search can be obtained and analyzed in a week or so, and a trademark application can be prepared within a few days after all necessary materials are obtained. Once submitted, the total time for an application to be processed may take anywhere from nine months to several years, depending on a variety of factors. And importantly, not all applications are ultimately approved for

registration.

Q: When can I begin using the ® symbol with my trademark in the U.S.?

A: The federal registration symbol ® may be used once the trademark is registered with the USPTO. Pending federal applications do not qualify for use of the ® symbol. The symbol TM should be used with non-federally registered trademarks and the symbol SM should be used with non-federally registered service marks.

Q: How long does U.S. trademark registration last?

A: Rights in a federally registered trademark can last indefinitely if the owner continues to use the mark on or in connection with the goods and services listed in the registration, provided that the owner timely files all necessary maintenance documentation. Maintenance documents are required to be filed, and fees paid, before the end of the sixth year, and before the end of subsequent ten year intervals, following registration.

Q: Can the ownership of a trademark be assigned or transferred from one person to another?

A: Yes. A trademark is assignable under certain conditions. Written assignments may be recorded with the USPTO.

Q: How do I prevent others from selling items bearing my trademark?

A: Counterfeiting is big business. To guard against the unauthorized use of your trademark by others, you can take several steps: Record your trademark registration with the U.S. Customs & Border Protection to guard against importation of counterfeit goods. Guard against the distribution of grey market goods by your suppliers. Inspect and audit your suppliers and licensees. Make sure that your authorized trademark is used in a consistent manner exactly as it is registered. Document all approved uses of your trademark with an appropriate license or agreement. Register your trademark in all countries where you are using the trademark, or where you are licensing the trademark, or where you are distributing goods bearing your trademark.

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