

How Businesses Can Enforce Trademark Registrations

Article

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Trademark registrations are a great tool for business owners to protect their brand identity. Unlike some other forms of intellectual property protection, trademarks can last forever provided that they are actively used and enforced within the marketplace. In other words, a business owner must “use it” or “lose it.”

Registration of a trademark with the United States Patent and Trademark Office (USPTO) grants the trademark owner the exclusive right to use the trademark in commerce for the goods and/or services listed in the registration and puts the public on notice of such use and ownership. The USPTO does not, however, actively monitor the marketplace or enforce such trademark registrations against third parties. That responsibility belongs to the trademark owner.

To maintain a trademark registration, you must:

1. Properly use the trademark in commerce and prove such use by making periodic maintenance filings with the USPTO; and
2. Routinely monitor the marketplace for potential infringers or unauthorized use of the trademark and enforce your rights accordingly.

Continued Use of Trademarks

Once you obtain a trademark registration from the USPTO, you must continue using your trademark in commerce. It is also important to ensure your use puts others on notice of your registration by using the ® symbol, which can only be used with registered trademarks, and/or by differentiating the trademark in writing by using **bold**, *italics*, or fonts in different colors or sizes. For all trademarks not registered or pending registration, a ™ should be used instead.

Maintenance Documentation

You must also timely file appropriate maintenance documentation to the USPTO to prove such use in commerce or your trademark will be cancelled or deemed expired.

- **Five-to-six years after registration**, you must file a Section 8 Declaration of Use and/or Excusable Nonuse wherein you attest you are still using the

PROFESSIONALS

Alexis M. Hedtke
Associate

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trademark in commerce and provide specimens showing such use.

- **Nine-to-ten years after registration**, and every 10 years thereafter for as long as the mark is in use, you must file a Section 8 and Section 9 Application for Renewal with the USPTO.
- **After five years of continued use** trademarks registered on the Principal Register, you may bolster your enforcement rights by filing a Section 15 Declaration of Incontestability. If granted, various aspects of the registration cannot be challenged by third parties (such as the trademark's validity).

Routine Monitoring of the Marketplace

Lastly, it is important to routinely monitor the marketplace for potential infringers and any unauthorized use of the trademark and enforce your rights accordingly. Failing to timely enforce your trademark rights against third-party infringers or unauthorized users can result in a weakening and loss of distinctiveness in your trademark, and you risk not being able to bring an infringement claim (depending on your state's statute of limitations period). Enforcement can be accomplished by using cease and desist letters, filing letters of protest and/or opposition proceedings if a mark you believe to be problematic has been filed with the USPTO, and trademark litigation.

Upon discovery of any infringing or unauthorized activity related to your trademark, it is best to consult with your trademark attorney to determine the best strategy and course of action for enforcement of your marks, which are valuable intangible assets of your business.

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