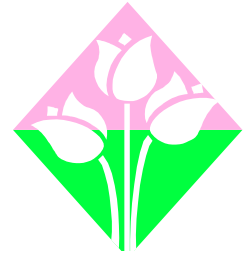




Happy Spring!

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“Tip of the Month”

What’s the Difference between Trade Name and Trademark?

We are often asked by our clients to “register a name.” A client has invented a product or started providing a service, and has come up with a name. The entrepreneur naturally wants to make sure that competitors cannot use it. The way a name is protected depends on whether it is the name of the business or the name of the product or service. This area of the law can be confusing because a business can have both a trade name and a trademark, and they can be exactly the same words, but protect very different things.

Consider the following example. Let’s say John Doe writes a software application that he wants to sell to other companies. He wants to call it “Acme.” John is an unincorporated sole proprietor. If he wants to do business in New Hampshire under any name other than “John Doe,” he must register the name as a trade name with the New Hampshire Secretary of State. The name John chooses cannot be confusingly similar to anyone else’s trade name. If there are other Acmes in New Hampshire, he will have to change the name a little. For example, John may be able to register “Acme Software.” Because he is not incorporated or registered as an LLC, he cannot use “Inc.” or “LLC” after the name. However, he can legally open bank accounts and sign contracts using the name Acme Software.

What if John wants to use “Acme” for his trademark, too? Before adopting the trademark, he should have a trademark availability search done to make sure no one else is using Acme for software. If a qualified trademark attorney has done the search and has given the opinion that it likely can be registered, then John can sell the software under the Acme trademark. The trademark acquires value and some “common law” protection just by being used in commerce. Registering the trademark with the State or the United States Patent and Trademark Office provides stronger protection, and is the preferred way to go.

A trademark differs from a trade name in that a trademark identifies goods or services as coming from a particular source, while a trade name identifies a business entity. Trademarks are always adjectives, and should carry the TM or ® symbol (if registered). For example, a proper use would be “AcmeTM software is the best.” A trade name often has the address of the entity after it. For example, “AcmeTM software can be purchased at Acme Software, 1 Main St., Concord, NH.”

Before adopting a “name” for your business or product or service, you should discuss the matter with qualified legal counsel. The attorneys at Mesmer & Deleault, PLLC are happy to help. Please give us a call at 668-1971, or contact us by email at mailbox@biz-patlaw.com.

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