

A Federal Trademark Registration: Your Company's Sword and Shield

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For any entrepreneur or business owner, whether they are aware of it or not, trademark rights in their brands attach automatically through use. These are referred to as “common law rights.” With that being the case, then why is it important to federally register your brands and logos? By analogy, that is like asking why you need homeowners' insurance for a house that isn't even on fire? Of course, in the unfortunate situation when the house does catch fire, or gets hit by a tornado, or flooded when the sewer backs, or whatever the case may be, it is already too late to protect it with an insurance policy. Much the same way, when your rights in your own brands are being called into question, often by a competitor you did not know even existed, it is too late to petition the government to back your claim of rights through a registered trademark. Simply put, a federal trademark registration protects your company and the valuable goodwill established in its brands by functioning as both a sword and a shield to afford that protection.

This is because a federal registration provides a rebuttable presumption of nationwide ownership of what is covered by that registration. The previously mentioned common law rights are limited in geographical scope, whereas a federal registration covers all fifty states, coast to coast. In a shrinking world made much smaller by the internet and the reach of social media, the value to any given business for this geographical expansion of rights should be immediately apparent.

As a sword, your trademark registration can be asserted against a competitor that has adopted (copied...“knocked off”...pick your descriptor) your company's brand, slogan, or logo. When putting a company on notice of your allegations of infringement, asserting a registered trademark eliminates the question as to whether your geographical rights extend into the territory of the infringer. On the flipside, as a shield, a federal registration is invaluable in countering the allegations laid out within any given cease and desist notice. Or, just as likely, the registration will prevent the notice from ever being posted in the first place, as the attorneys for the entity seeking to accuse you of infringement will first check the United States Patent and Trademark Office for the status of the alleged infringing marks.

In either of these scenarios, engaging a competitor without first protecting your intellectual property with an appropriate federal registrations truly is like stepping onto the battlefield without either your sword or your shield.