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Understanding Trademarks – Key Differences between Legal Names, Trade Names, and Trademarks

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Legal Name vs. Trade Name vs. Trademark

Many people are often confused as to the differences between legal names, trade names and trademarks. Moreover, many business owners assume that once they have chosen a business name and registered the business with the state, that they have unlimited rights to the name in conjunction with their business. The following questions and answers will hopefully explain the different meanings of these terms and the proper usage of each.

A. What is a Legal Name?

The legal name of a business is the name of the person or entity that owns a business. If the business is a partnership, the legal name is the name given in the partnership agreement or the last names of the partners. For limited liability companies (LLCs) and corporations, the business' legal name is the one that was registered with the state government. These names will often have a "legal ending" such as LLC, Inc. or LLP.

B. When Should a Legal Name be Used?

A legal name should be used when communicating with the government or other businesses. For example, the business' legal name should be used when filing tax returns, buying property, or writing checks.

C. What is a Trade Name?

A trade name is generally considered the name a business uses for advertising and sales purposes that is different from the legal name in its articles of incorporation or other organizing documents. A trade name can also be referred to as a "Fictitious Name" or a "Doing Business As" (DBA). Examples of trade names are the use of the name "Kodak" by the company whose legal name is "Eastman Kodak Company" or "McDonald's" by the company whose legal name is "McDonald's Corporation." A trade name may not include Inc., LLC, Corp. or similar legal endings. Although a trade name may sometimes also be a trademark, a trade name is not, in itself, a form of intellectual property.

D. When Can a Trade Name Be Used?

A company may use a trade name for advertising and trade purposes. It is often the name the general public sees on signs, the internet, and advertisements.

E. What is a Trademark?

A trademark is any word, phrase, design, or symbol that a business uses to distinguish its goods and services from someone else's and to indicate the source of the goods. In short, a trademark is a brand name. A trademark can be any combination of the above and can even be a slogan, such as Coke's "It's the Real Thing." The Nike "swoosh" is a trademark, as is the Gap logo and thousands of other familiar symbols and logos. Trademarks that

have been registered with the U.S. Patent and Trademark Office should have the registered trademark symbol ® after the mark on the product, its packaging, or when used in association with the service.

F. Can a Trade Name Be Used as a Trademark?

When a business is using its trade name to identify its products or services, then the name is functioning as a trademark, and trademark law must be considered. A company has a legal right to use a name as a trademark only to the extent that it does not infringe upon existing trademarks. It is not necessary to register a trademark; however, federal registration has several advantages, including notice to the public of the registrant's claim of ownership of the mark, a legal presumption of ownership nationwide, and the exclusive right to use the mark on, or in connection with, the goods or services set forth in the registration. The trade name "Kodak" is a federally registered trademark of the Eastman Kodak Company and the trade name "McDonald's" is a federally registered trademark of the McDonald's Corporation.

G. When Does a Trade Name Infringe Upon a Trademark?

If a trade name is similar enough to another's trademark that it creates a "likelihood of confusion" in the mind of a purchaser, it may be infringing the trademark, which can prove to be a very costly mistake.

Conclusion

Understanding the terms "legal name," "trade name" and "trademark" can be confusing, however, each of these terms does have a different meaning. While there are gray areas, it is easiest to view legal names and trade names as relating to businesses or entities and trademarks as relating to the products or services of the businesses or entities.