

The Business of Trademarks: Part 1

PUBLISHED ON
August 21, 2017

You're a small business owner from central Pennsylvania on vacation in Helena, Montana. You're on your way to your campsite and look up to notice a billboard, one of the hundreds you'll see while on your trip. However, this one catches your eye. This billboard is for a regional Montana company using the trademark you have been using with your business for years. They are even using a logo that looks eerily similar to the one you have used to associate the goodwill of your business.

Should you be concerned? Is there more that you could have done to protect how you distinguish your business from others?

Even though you think there may not be a market for a brand or logo you have designed outside of your geographic area, be warned - there probably is or will be.

The best way to guard against this and protect your brand is through a federal registration.

Trademark: Expand Your Right to Sue through Registration

The first person to use a trademark in connection with specific goods or services preserves a common law right to prevent any unauthorized use of that mark with similar goods or services. However, federally registering your mark with the United States Patent & Trademark Office provides more protection than established under common law. In fact, an unregistered mark may only protect use of your mark within a specific geographical area, while a federal registration provides exclusive right to use of that mark nationally.

If your mark lacks federal registration, the ability to enforce your rights through legal proceedings may therefore be limited. In fact, a registration not only provides constructive notice of the mark to infringers, but provides right to sue in federal court as to ownership of the mark. Federally registering your mark also provides more remedies available against infringing parties, such as the ability to recover up to triple damages and attorney's fees for any willful violations.

The rights established from a federal registration can last indefinitely, as long as the owner continues active use of the mark. Registering your trademark provides a bundle of exclusive rights that are otherwise not available through common law use of the mark, making it a must for any business owner with an exclusive design or brand.

If you have any questions on trademark protection, [please contact me](#) or any of the attorneys in [Barley Snyder's Intellectual Property Practice Group](#).

:



Joseph R. Falcon, III

Partner

Tel: (610) 889-3697

Email: jfalcon@barley.com