

HOW TO BUILD A POWERFUL, PROTECTED BRAND IDENTITY

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Some of the greatest entrepreneurial ideas fail to take off because companies fail to communicate their value and a unique brand identity that differentiates them from their competitors. Once you decide to invest in your brand, however, you can create a powerful brand identity that can be protected under trademark law.

What is a brand?

A brand is, at its root, the combination of products, image and message you present about your company. It's also people's gut feelings about you and about your products.

Externally, it is the identity that resonates with customers and builds relationships, while internally it serves as the compass that keeps you on target with your mission. So branding is as much about self-awareness as it is about public identity, and all decisions should be made in alignment with your brand.

Why should a start-up worry about its brand?

If you don't take control of your brand identity, others will decide what your brand is, whether good or bad, fair or unfair. Therefore, you must make a consistent, cohesive case about your value, lest others decide for you (or simply ignore you). Conversely, if you stay true to your mission and clearly define your identity, people will have a stronger impression of your brand.

Creating and shaping your brand

Many people believe that a brand is simply a logo or name, but there are a number of components that are all vital to the building of your brand, including quality products, customer service, recognizable corporate identity, positioning and associations. All of these qualities combine to form and strengthen your brand, but a shortage of any of these qualities will weaken it.

Choosing a name

A name should conjure an image and make an association between your company and its target audience. This is not an easy task, but suffice it to say that arbitrarily choosing a name could jeopardize a lot of hard work and personal sacrifice you've made in creating the best products known to man. Many wonderful products languished in the marketplace for lack of a cohesive brand strategy, so put as much thought into this aspect as you have in making your product good.

The tagline

A great way to further strengthen how people perceive your company or products is with the use of a tagline. This is different from an advertising slogan, as it has more longevity and is a more specific description. A company with the name of *Luminex Lighting* might use a tagline such as "Better Workspace Solutions" to clarify that they work in the commercial space, not residential.

So, you've chosen a name...

If you have already incorporated your business, you may think that you have the legal right to use your selected trade name. Well, maybe not. When the State allows you to incorporate under a particular trade name it does not check to see if there is another business that has registered a similar name as a trademark. You may spend thousands of dollars purchasing letterhead, signage and marketing materials with your trade name, only to receive a cease and desist letter from another company that has registered the same name as a trademark.

Trade names and trademarks similar, but only trademarks are federally registered. A trade name – your company's name – just refers to your business entity; e.g., "*Nectar Strategic* provides marketing communication services." But, your company's name could also be a trademark; e.g., "*Nectar Strategic* marketing communication services can help you build a more powerful brand." The first example used *Nectar Strategic* as a noun, while the second example used *Nectar Strategic* as an adjective to describe a specific brand of marketing services. A trademark is a word, phrase, symbol or design (or a combination of these) used by a business that identifies it as the source of the goods and distinguishes its goods from those of other businesses.

How do I protect and strengthen my brand?

The most valuable step you can take is to register your trademark with the United States Patent and Trademark Office (USPTO). You have already spent considerable time, effort and money to develop your brand names, product names, taglines and logos, so it's vital to protect them so that others won't infringe on your intellectual property.

Registering your trademarks will provide numerous benefits.

Federal trademark registration:

- Gives constructive notice of your claim to the trademark;
- Confers a legal presumption of your ownership of the trademark and your exclusive right to use the mark nationwide in connection with the goods/services listed in your registration;
- Gives you the ability to bring a lawsuit in federal court;
- Provides a basis to obtain trademark registration in foreign countries; and
- Allows you to file with the U.S. Customs Service to provide the importation of infringing foreign goods.

In addition to these legal benefits, registering your trademark will allow you to realize a number of intangible benefits:

- You will have the ability to use the “R-in-a-circle” with your packaging and marketing materials, which sends the message to potential customers that you are a reputable company.
- Registration of your brand helps protect the valuable brand loyalty that you have developed by preventing infringers from stealing your brand value.
- Lenders may value your trademarks and other IP more highly as collateral if those assets are registered and maintained as part of an organized IP portfolio.
- Registering makes it easier to license marks to others for use on other goods or services, which has three main benefits: 1) extending the reach of your brand; 2) creating an additional revenue stream; and 3) establishing your brand quicker.
- The value of your brand is increased because you have a federally protected right to sell your branded products on a nationwide scope. This is more desirable to potential purchasers or marketing partners, and can help command a higher purchase price upon a sale of the brand or business.

Proper trademark use

Consistent, proper use of your trademark over time creates a strong, valuable brand. Did you know that you

can use the “TM” (or “SM” for services) on all of your trademarks? You can only use the “R-in-a-circle” once you have federally registered your trademark.

Words of caution

Federal trademark registration can get pricey. Filing fees alone are \$325 per class of goods or services, so the last thing you want to do is to have your trademark application rejected for simple errors. The USPTO will not refund filing fees for rejected trademark applications. The simplest error you can make is to choose a trademark that is generic or merely descriptive (e.g., you cannot register “electromobile” as a trademark for electric cars). On the other hand, coined terms such as “Xerox” make for a strong mark because they bear no relationship to the goods they describe.

What’s next?

- Begin thinking about your brand as a cohesive part of your growth strategy
- Identify holes in your current strategy and where you might want additional resources to help
- Review your company’s name, your product names, and your other trademarks
- Develop a tag line
- Secure domain names for all trademarks
- Use “TM” and “SM” on all trademarks
- Use trademarks consistently
- Invest in your brand

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Lisa D. Primerano, Esq. started her own practice after practicing corporate law and commercial litigation for nine years with prominent Buffalo-area law firms. Her practice concentrates in the areas of business and corporate law, emphasizing on intellectual property law. She counsels clients and other attorneys on creating value by strategically protecting, enforcing, and licensing trademarks, copyrights, patents and other IP.