

GENIUS NOTES

SIMPLIFYING THE TRADEMARK PROCESS



GEMS DROPPED

- > Big brand secrets.
- > Most common trademark mistakes.
- > How to avoid them.

OH, YOU FANCY HUH?

Breaking Down the Importance of Creating a Strong Brand Name and Trademark

Have you ever wondered why the biggest brands always seem to have the most random names + trademarks? Well, it's intentional. And an excellent illustration of why a great intellectual property strategy is integral to the success + expansion of your business. So, what is the secret? What's in a name? Everything.

Let's say that your neighbor is the best handyman on the block. You've only ever seen him from the eyes up, but there isn't an appliance he hasn't been able to fix for you. You think he should open a repair business. He agrees + takes all the necessary steps to formalize his business. Your neighbor, let's call him Winston, considers himself a pretty regular, degular, schmegular guy and wants his business to reflect that. So, he calls his business "Chicago's Best Handyman Services". That's descriptive because it describes the services that he's intending to offer. From a marketing perspective, it makes sense. But from a trademark perspective, not so much.



UBER. PANDORA. GOOGLE. INSTAGRAM. PINTEREST. EVITE. STARBUCKS. ASOS. TWITTER. NET-A-PORTER. FACEBOOK. APPLE. COCA COLA. SAMSUNG. AIRBNB. AMAZON. ETSY. HALLMARK. ZAPPOS.

THEY'VE GOT SOMETHING IN COMMON.

Any idea what that is? No, it isn't just that these are some of today's biggest and most recognizable brand. It's more than that. It's the uniqueness of their brand names.

In the trademark world, there are two very strong categories of names. The absolute strongest type of name is one that is completely and totally made up. Those types of names are considered to be 'fanciful'. (Think: Kleenex.) The second strongest type of name is one that uses a name we're all familiar with, but uses it out of context. (Think: Apple computers). These names are considered 'arbitrary'. Names that are fanciful or arbitrary tend to be more valuable + most difficult to challenge.

THE MOST COMMON TRADEMARK MISTAKE.

The most common trademark mistake we see is business owners giving their products or services brand names that describe the work their business performs.

A business cannot register a federal trademark for a brand name that's merely descriptive. The only exception is that sometimes business may be able to register the trademark after 5 years of massive investment in marketing + advertising. At that point, the business may be able to successfully prove that their use of the mark has given it a secondary meaning. In other words, they've garnered such fame while using the descriptive name that people now immediately associate it with their product or service.



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LEVELS.

In pop culture, we call it levels. In the trademark world, we call it spectrum of distinctiveness. The spectrum of distinctiveness refers to the different classifications assigned to trademarks by the USPTO, which determines the strength of the mark. The strength of a trademark determines the level of protection afforded to the mark. If you recall, fanciful marks are considered the strongest type of mark. Likewise, these marks are afforded the highest level of protection, followed by arbitrary marks. Suggestive marks fall in the middle of spectrum and are the most common type of mark, as they tend to indicate or suggest the nature or characteristics of the product or service, but does not describe the product or service. This is important because marks that describe a product or service are considered descriptive marks and in order to receive federal trademark protection, must show evidence of 'acquired distinctiveness' through extensive + continuous market use. Generic marks are the final category of marks. You don't want a generic mark because these marks do not serve as source identifiers. If a mark does not identify a source, it cannot be registered as a federal trademark.

THE SECRET IS OUT.

That's the secret. The biggest brands that you've been following + friending + spending your hard earned money on have brand names that are arbitrary or fanciful. Why? These types of trademarks are the easiest to protect and are more valuable.

IT TAKES A VILLAGE, (READ: A TEAM).

Don't fret. Unless you're Snoop Dogg or Mary J. Blige, it's difficult to come up with an arbitrary or fanciful name. Real spill, these businesses usually have teams, both legal + creative, involved with naming their brands. This isn't to discourage you. This is to lift the veil and inform you of what the big brands are doing. And hopefully encourage you to keep these gems in the front of your mind as you plan, strategize, and build your brand.

