

Copyrights and Trademarks!

Make 'em Yours, and
Put a Fence Around 'em!



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Helping You Make Your Mark

Dave Purdue: dpurdue@purdue-law.com

2735 N. Holland-Sylvania Rd
Toledo, OH, 43615
419-531-0599

Copyright

Copyright protects “original works of authorship” or “Works.”

Works include photographs, graphic images, and web sites.

What protection?

Copyright Rights

The owner of a copyright has the right to stop others from:

- Making copies of the Work;
- Distributing copies of the Work;
- Displaying the Work; and
- Making derivative works based on the Work

Establishing Copyright Protection

When a Work is created, and the Work is one that can be protected by copyright, it is protected by copyright.

Copyright protection for a Work is automatic upon creation of the Work!*

*Just Stark Naked Magic

Copyright Ownership – Who?

The “Author” owns the copyright.

- In the case of a work created by an individual, she is the Author and she owns the copyright.
- In the case of a work created by an employee, the employer is the Author, under the work made for hire rule, and the employer owns the copyright.

Employer - Employee

If you pay a person or a company only to design your packaging graphics, your web site or your logo, you are not an employer!

In this case, you must get the person or company to assign copyright to you. A written assignment is required. It can be simple.

Copyright Assignment

Whereas I am producing a web site (the “Work”) for Soaper;

Whereas Soaper wants to own the copyright in the Work;

Now, therefore, I hereby assign all of my right, including copyright, in and to the Work to Soaper.

Copyright Registration

You can file an application for registration online. The fee is \$35 if you are the author, and \$55 if you are not the author.

But Copyright protection attaches when a work is created – so why register?

Why Register?

- Gives the public notice of your ownership
- Provides legal evidence of ownership
- Provides presumption of validity
- Maximizes damages that can be recovered
- Gives you the right to bring an infringement suit

Copyright Notice

Copyright notice looks like this:

© Dave Purdue 2016

Copyright Notice can be used whether the copyright is registered or not.

Copyright notice is not required.

However, copyright notice looks official and it conveys a message: I take my intellectual property seriously.

How To Avoid Infringing

Designing your web site:

- Take your own photos, use free stock photos, or hire someone to take photos and get an assignment.
- Write your own copy, or hire someone to write your copy and get an assignment.

How To Stop Infringement

- Phone call.
- Cease and desist letter.
- Lawyer letter.
- Lawsuit (Copyright must be registered before filing a lawsuit).

Copyright Myths

- Copyright is too complicated for me.
- I can use it if I found it on the Internet.
- I'm protected because I mailed a copy to myself.
- I can use someone else's copyrighted work if I change it by at least 10%.

What Is A Trademark?

A TRADEMARK:

includes **any word, name, symbol, or device**, or any combination thereof,
used by a person:

- * to identify and distinguish his or her goods from those manufactured or sold by others, and
- * to indicate the source of the goods, even if that source is unknown.

Trademark Right

A Trademark owner has the right to stop another person from using a trademark on a product if that use is **likely to cause confusion**, deception, or mistake about the source of the other person's product.

Trademark - A Word or Name

The world's best
soapmaking information
comes from Soaping101



Trademark – A Symbol

The world's best
soapmaking information
comes from Soaping101



Generic Term - Not A Trademark

- Bath Fizzie is not a trademark.
- A Bath Fizzie is a generic term for a product that effervesces in bath water.
- Bath Fizzie can't identify the source of this product.
- (Bath Fizzies is a mark registered for toy figures)



Selecting a Trademark

(1) Pick a strong Trademark!!

(2) Search for a Conflict.



Selecting a Trademark

Think about salsa. It is delicious and it is comes in different strengths:

Mild – Medium – Hot – Blistering.



Trademarks also come in different strengths:

Descriptive – Suggestive – Arbitrary – Coined

Is Confusion Likely?

Lots of things to factor in,
but two of them stand out:

- How similar are the **marks?**
- How similar are the **products?**

A balancing test.



Is Confusion Likely?

Similarities between the **marks**:

Sight

Sound

Meaning

Is Confusion Likely?

Similarities between the **products**:

Identical

Related

Complimentary

Channels of Trade

(soaps and chocolate)

Trademarks are product specific

Searching For A Conflict

www.uspto.gov

The trademark database includes:

- Registered Trademarks;
- Trademarks that were Registered;
- Trademarks in pending Applications; and
- Trademarks in Lapsed Applications.

Let's have a look.

Searching For A Conflict

Other places to look for conflicting marks:

State Trademark databases

Trade Journals

The Internet

Domain Name Registrations (don't wait to register one)

Trademark service companies will prepare a search report based on all of these sources, and more!

Establishing a Trademark Right

If someone puts a trademark on a product and sells the product, she is either:

(1) Establishing an enforceable right in the trademark

or

(2) Infringing someone else's trademark

Establishing a Trademark Right: Use

Dave's



=Trademark*

***Stark Naked Magic**

Not Establishing a Trademark Right

Trademark Rights are not created by:

(1) Registering the name of your corporation or LLC in the Secretary of State's Office in your state. No trademark right in the name is established.

Use is required!

(2) Registering a domain name including your mark. No trademark right in the domain name is established.

Use is required!

Why Register A Trademark?

TM → ®



Why Register A Trademark?

Registration inserts your mark in the Patent and Trademark Office trademark database making it:

- Easy to find by someone looking for a conflict.
- Easy to find by an examining attorney reviewing someone else's application

Why Register A Trademark?

A federal trademark registration is powerful!
It carries presumptions:

- The registered mark is a valid mark.
- The owner of the registration owns the mark.
- The owner has the right to exclude others from using the same or a confusingly similar mark.
- Nationwide rights

Federal Trademark Registration

How to:

On-Line Application system – TEAS.

www.uspto.gov

Do I need a Trademark Attorney? No.

The Federal Registration process is summarized in the US Trademark Registration Process Handout.

Trademark Infringement

Likelihood of confusion means infringement.

When a Trademark is being infringed, it no longer indicates source.

Therefore, the owner of a trademark must take steps to stop infringement, or risk losing her rights to her trademark.

Trademark Infringement

There are different strengths of Infringement:

- Innocent
- Trying to come close to a successful Mark
- Blatant
- Trademark Counterfeiting

Trademark Infringement Suit

- In 2011, Plum Island Soap Company became unhappy with Danielle and Company and concluded that it was infringing Plum Islands' Trademarks.
- Plum Island sent multiple cease and desist letters, but Danielle and Company did not even respond.
- Plum Island filed a lawsuit for trademark infringement in the US District Court for the District of Massachusetts.

Trademark Infringement Suit

- The Court instructed the parties to discuss the case, and try to come to some kind of agreement.
- They did not reach an agreement.
- Before there was a trial, Plum Island asked the Court to issue an order prohibiting Danielle and Company from selling any more Manly Man Cans.
- The Court thought about it for a minute and issued the order – a preliminary injunction.

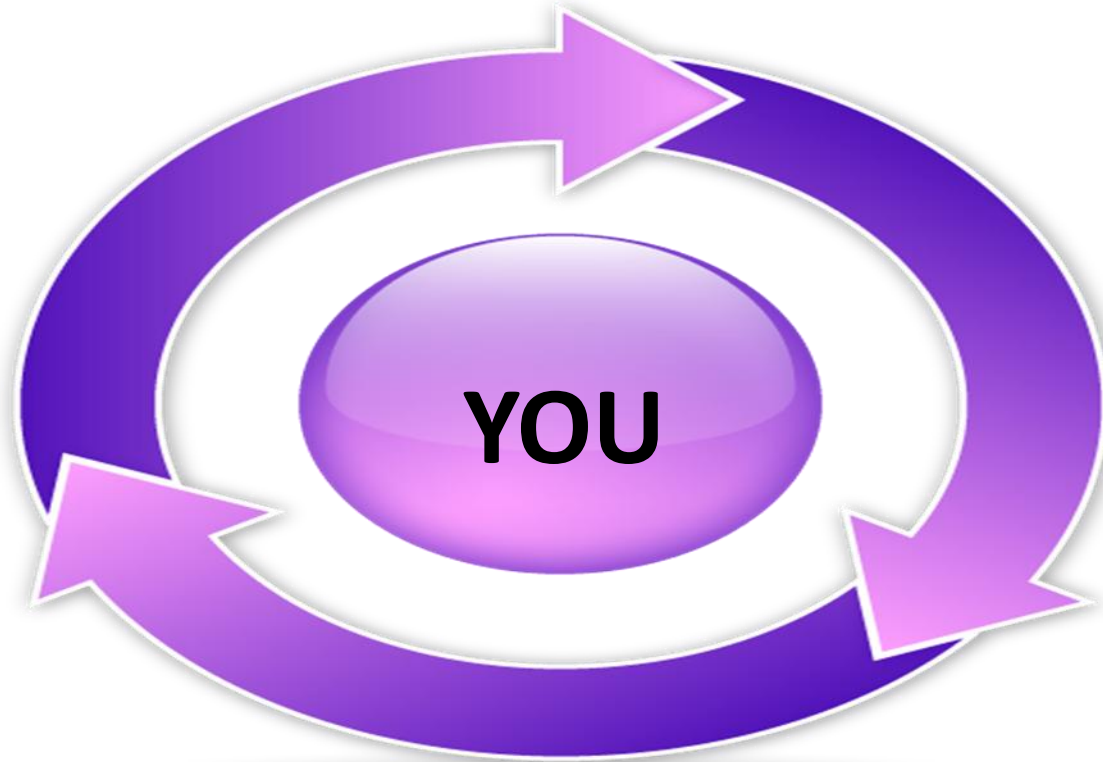
What Is Your Brand Name?

- It is a word or symbol that uniquely identifies you as the source of your products.
- It is used by your customers when they want to buy more of your products.
- It is used by your customers when they tell their friends about how wonderful your products are, also known as word of mouth advertising.

What is Your Brand?

- It is the feeling that customers get when they see or hear your brand name.
- It is the sum of the expectations that your customers have when they purchase your products.
- It is the reason why your customers buy your products again and again.
- It is the reason why your customers tell potential customers about you, and why they recommend you.

You are at the Center of Your Brand



Thank you! Questions?

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