

Protecting Your Logo

by Quenda Behler Story

Suppose you use a logo to accompany your business name and help identify your company as yours. Say, your business name is Dr. House and you have this terrific logo of a hammer and saw crossed with a stethoscope. You've painted it on your company vehicles, and it's printed on your letterhead and business cards.

How do you protect that logo? What's to keep your competitor, Sam the Carpenter Man, from deciding that he'd like to use it, too?

Trademark Law

Logos are a kind of trademark. Trademark law is designed to prevent people like Sam from stealing the goodwill that you have created for your company, and to keep Sam from making customers think he is you by using a confusingly similar trademark. Technically, a combination of trademark law and copyright law protects logos, but how that works is more than you want to know.

You can't trademark just anything. For example, you can't trademark a surname or a geographic area or some general symbol such as a hammer or a screwdriver. It can get complicated, however: If you had a logo of a hammer and a screwdriver, your particular rendering of those tools could be protected, but you couldn't keep someone else from creating a logo using a hammer and screwdriver in a different design.

Every state has a registry for logos and trademarks. Registering your logo with the state allows Sam to see what's already being used. (This is not the same as registering with an "assumed names" or "doing business as" index, which is required of anyone doing business under a name other than his given name and is usually a county function.)

To stop Sam from using a logo like yours, however — whether he knows

he's doing it or not — you must own your logo. For you to own your logo, it must be recognizable as identifying your business and distinctive enough that it's possible for you to get property rights in it. You do not get those property rights by registering your logo with the state.

Trademark law says that to have property rights in your logo, you must use it — paint it on your truck or put it on your business cards, or otherwise display it publicly as identification of your business. Using it first is what gives you property rights in that logo.

First Use

The first user in a market owns the logo in that market. For example, your market might be carpentry service in the area where you work. If Sam's trademark is similar enough to yours to be confusing to potential customers and he uses it in your market, owning your logo gives you the right to sue him.

You can sue him to make him stop using your trademark, and you can win damages and loss of profits. In some states, you can even make him pay for the lawyer you had to hire. You can do that even if Sam registered your logo before you did, as long as you used it before Sam registered it — and can prove it. However, if you are the first user of your logo and have registered it, all you probably have to do if someone else uses it — and refuses to desist — is get your lawyer to write a threatening letter.

Creating a Presumption

Okay, I hear you asking, if registration is not the magic bullet, why bother with it? Lots of people don't register their logos, particularly if their businesses are small and local and they do not intend to expand outside of their area. But — besides allowing others to

see that a particular logo is taken — if you ever have to sue someone to protect your logo or trademark, registration makes things much easier for your lawyer, because it creates a *presumption* that you were the first user. That means that your lawyer doesn't have to introduce testimony about how you painted it on your truck in 1999 and bring in some customer to testify that he recognized your logo as yours and so forth. In other words, registration could save you lots of money and legal time.

Besides state law, which is what we've been talking about so far, there is a federal registry. It's also based on first use, and it does provide some property rights. It expands your property rights beyond your state lines. If Sam lives in another state, uses your trademark without realizing it, and registers it federally, it's possible for him to own your trademark everywhere except in your state, where you own it. If he registers it federally *before your first use*, then he owns it across the country, including the state where you live. But federal registration is expensive and technical. Unless you have really big plans, like franchising beyond your state lines, you don't need to worry about it.



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