

Trademark Searches

By J Fisher

Trademark Searches

J Fisher
digilaw_2000@yahoo.com

DigiLaw Publishing, Inc. <http://www.weblawresources.com>

Why Every Web Business Needs One Trademark Searches

Why are Trademark Searches Necessary? HERE IS A TYPICAL STORY.....

About Trademark searches. You are up and running with your new Web based business. You have invested money and time developing your site and your online marketing program. Then, to your surprise, you receive a certified letter from a company in Washington State telling you that they own the name of your company and that you are to immediately cease and desist from all infringing activities. The letter goes on to cite a laundry list of bad things that the company is going to do to you if you do not immediately cease and desist.

Unfortunately this is a very common story. This situation can be avoided by performing a trademark search before you invest money in your business or domain name.

WHY DOES THIS HAPPEN SO OFTEN ?

The reason this situation occurs so often is that most people do not realize that simply owning a domain name and registering the name through the InterNIC does not necessarily confer the right to use that name for commercial purposes on the Internet or otherwise. It must be kept in mind when selecting a domain name that the InterNIC procedures and Trademark Law are two separate and distinct matters. Both must be considered when starting a web-based business.

REMEDIES FOR TRADEMARK INFRINGEMENT

Remedies for trademark infringement range from (1) granting of an injunction prohibiting use of the infringing name, (2) seizure and destruction of infringing items which can be must broader in scope that the simple web page itself, (3) suit for damages based upon loss of profits to the owner of the name, your profits from the use of the name, value associated with dilution of the name, and other damages, (4) possible punitive damages that can far exceed the amount of damages actually suffered, and (5) possible attorney fee award. Each of these can have disastrous effects on your business.

Trademark Search - MILLION DOLLAR ADVICE

Before using a domain name, every company that wants to create an Internet presence needs to perform a federal trademark search to assure that the name does not infringe on the rights of another party. Failure to get a trademark search can lead to disastrous results as described above.

Receiving a letter like the one that is described above will quickly make you wish that you had taken the precautionary step of performing a trademark search before resources are expended on your web presence.

TYPES OF TRADEMARK SEARCH

Trademark Search of Trademark Office. Simple Trademark Search. Several online companies offer online trademark searches of the trademark office records to determine whether your name infringes upon a registered trademark of another party. You can perform a trademark search of the trademark office database on your own. There is no need to pay for a trademark search of the trademark office database. I would argue that these free or bargain price trademark searches of the federal trademark records do you little if any good. Sure, they will tell you if your name infringes upon a party that has received a registration of a federal trademark. But that is all that type of search will tell you.

Understanding the limitations on this type of trademark search requires a brief description of the nature of trademarks and the trademark procedures. One key misunderstanding that a lot of people have about trademark law is that federal trademark rights DO NOT come into existence when a trademark application is filed and a registration is received. The reality is quite to the contrary. Trademarks rights arise upon use of a mark in interstate commerce. That means using the mark in connection with a good or service across state lines. State trademark rights can attach upon any use in connection with goods or services and do not require use in interstate commerce.

So it is obvious that there are loads of people out there who have valid claims of state and federal trademark rights who have never filed a trademark application. These people would not be found by searching the records of recorded trademarks in the federal trademark office. I would venture to say that there are more people out there who have claims that they have trademark rights that have not filed trademark applications than those that have actually filed applications. For this reason, in order to get meaningful results from a trademark search it is vital that common law sources also be checked. This type of search goes to a number of different business sources to search for conflicting names and gives you much more meaningful results than a simple trademark office search. In fact, prior to filing a federal trademark application, it would be negligence for any party to simply rely upon a search of the trademark office records. There are just too many potential parties out there that would not be picked up in this type of limited search.

It should be kept in mind that there is no search available that can give you 100% guaranteed results that there is no one out there that is doing business under your selected name. But relying on a simple trademark office search is unacceptably risky. Additionally, running a comprehensive trademark search can help you establish that you used good faith and any infringement is purely innocent if a party later crawls out of the woodwork and alleges infringement.

Sure, comprehensive common law trademark searches are more costly, ranging anywhere from \$275.00 per search to \$700.00 per search. But web-based businesses should factor this cost into their start-up expenses. It is perhaps the most important money that you will spend in terms of avoiding legal risk and expenses.

Article provided by DigiLaw Publishing, Inc. offering web development and technology agreement form document and resource packages at www.weblawresources.com

Get-Articles.com : 1000's of reprintable business and internet marketing-related articles.

[Submit your article for reprint.](#)