

5 THINGS TO KNOW



ABOUT TRADEMARKS

Trademarks and copyrights can help you protect your intellectual property and build your brand. Here are five things you need to know.



1. THERE ARE TWO TYPES OF TRADEMARKS

A trademark is anything that identifies your goods or services and distinguishes them from those of your competitors. Though words, phrases, symbols, and designs are the most common trademarks, **companies like Verizon and Hasbro have trademarks for scents**,¹ and **Lucasfilm has trademarked the infamous sound of Darth Vader breathing**.²

There are two kinds of trademarks:

- A **common law trademark** provides regional rights and is established when you add a TM (or SM for servicemark) superscript to your word, phrase, symbol, etc. — as long as no one else is already using it.
- A **registered trademark** provides federal rights and is established once you've completed registration of your word, phrase, symbol, etc. with **the US Patent and Trademark Office (USPTO)**,³ and is denoted by the [®] superscript, which you'll use in place of TM or SM.

Trademarks differ from copyrights, which protect original works of authorship like art, literature, songs, computer software, and more, and are identified with the [®] superscript. A logo that is both an original design and used to distinguish your company from others can be covered by both trademark and copyright protection.

2. TRADEMARK REGISTRATION IS OPTIONAL

You do not need to register a trademark to begin using it; as mentioned above, simply applying the TM establishes the common law trademark you can use to distinguish yourself regionally. However, registering your trademark does have its benefits. The number one reason to register your trademark is that doing so gives you enforceable, exclusive rights to use it across the entire United States. Trademark and accompanying registration information is listed in the USPTO database, making it visible to anyone searching trademarks — especially those similar to yours. If someone infringes on your trademark once registered, you have the right to sue them in federal court. Additionally, registered trademarks are incontestable after five years, cementing a lasting

While the above reasons to register a trademark can be just as beneficial for your small business as for a large corporation, the experts at Synchrony suggest prioritizing your registered trademarks to save money and valuable time:

1. Business Name
2. Product Name(s)
3. Key Tagline

If you plan to use a name or tagline simply for a seasonal or one-time campaign, it may not be worth it to register the trademark, and a common law trademark should be sufficient. However, it's recommended to always search the **USPTO trademark database**⁴ before use so you can be sure your mark is not already being used in a way that could constitute infringement on your part.

3. THE TRADEMARK REGISTRATION PROCESS TAKES RESEARCH — AND PATIENCE

Before starting the registration process, it's important to ensure your trademark is strong enough to be protectable. The USPTO provides guidelines along a protectability spectrum to help you gauge the strength of your trademark.



Strong trademarks are:

- **Fanciful** — words you've invented, like PayPal
- **Arbitrary** — words not typically associated with your product, like Apple for technology products
- **Suggestive** — words suggesting one or more qualities of your product or service, like Jaguar automobiles



Weak trademarks are:

- **Descriptive** — words that simply describe all or part of your product or service without distinguishing them from other companies offering the same thing, like “creamy” for yogurt
- **Generic** — words that are common names for your product or service, like “coffee shop” for a coffee shop

Once you've determined the strength and protectability of your trademark, the next step is to verify it's available by searching the USPTO trademark database. If no one is using your preferred trademark — or it's being used outside your industry, you can prepare and submit your application with the USPTO, and monitor your application status online. **Fees start at \$250 per mark and per class.**⁵ There are 45 classes, which are categories that cover all goods and services. Your business might fall into more than one category, meaning you'll need to register your trademark in multiple classes.

If your search results show a business in a similar industry using a trademark similar to yours, it could be helpful to hire a lawyer to help you navigate the process and give you the best chance of registering your preferred mark. Retaining legal counsel will significantly increase your fees — about \$1,000-2,000 per mark and per class — so you might need to weigh the importance of your trademark to your business at that point.

Whether you apply for trademark registration on your own or with the help of a lawyer, be patient. Processing and registration can take between 12-18 months.

4. THERE ARE SOME DO'S AND DON'TS TO USING YOUR TRADEMARK

Once you've applied for registration, there are some things to keep in mind.

Do:

- Identify your trademark using the appropriate superscript: TM, SM, or ®
- Differentiate your trademark in text using capital letters, italics, boldface, color, or quotation marks
- Use your trademark consistently, especially as it relates to spaces and hyphens between letters or words ("Harley-Davidson" vs. "HarleyDavidson")
- Employ your trademark as an adjective to describe the generic term for your product ("Apple computer")
- Include statements in your marketing materials (website, emails, etc.) identifying your trademark as a trademark

Don't:

- Use the ® superscript until you've completed your trademark registration
- Alter your trademark to be used as a noun ("Polaroids" vs. "Polaroid cameras") or a verb ("Googling")

- Change the tense of your trademark to plural ("Pepsis") or use it in the possessive ("Keebler's Elves")

5. CAN I USE OTHER BRANDS' TRADEMARKS IN MY SMALL BUSINESS MARKETING COMMUNICATIONS?

When thinking about trademarks, it's important not only to consider your own, but how you use those of your partners, clients, and other businesses in your marketing materials. To avoid trademark infringement, be sure you have permission to use others' trademarks, and be sure to use them correctly.

Here are a few general rules to keep in mind:

- For your clients and partners, trademark usage information should be detailed in contracts and agreements to establish appropriate usage.
- In some cases, such as technology providers, you can follow the published trademark usage guidelines to ensure proper use (for example: "Apple Store" for app download button on your website).
- For all other third parties, express written permission must be granted. This is why you might see **a lot of marketing around "the big game" near the end of football season**.⁶ Exceptions to this rule include **descriptive or nominative fair use**,⁷ but it's important to do your research before using third-party trademarks in your marketing.

For more information or to connect with an expert, contact us at synchronyconnect@synchrony.com.

Synchrony Connect is a value-added program that lets Synchrony partners tap into our expertise in areas beyond credit. It offers knowledge and tools that can help you grow, lead and operate your business.

This content is subject to change without notice and offered for informational use only. You are urged to consult with your individual business, financial, legal, tax and/or other advisors with respect to any information presented. Synchrony and any of its affiliates (collectively, "Synchrony") makes no representations or warranties regarding this content and accepts no liability for any loss or harm arising from the use of the information provided. Your receipt of this material constitutes your acceptance of these terms and conditions.

PayPal and the PayPal logo are trademarks of PayPal, Inc.

¹Forte, Steven M. (2021, March 22). **Scent Trademarks: A Unique Smell** Smith & Hopen Trademark and Patent Attorneys.

²**Image Trademark with Serial Number 77419252**, Justia Trademarks, Justia.com

³**Trademarks**, United States Patent and Trademark Office, 2022

⁴**Search Trademark Database**, United States Patent and Trademark Office, 2022

⁵**USPTO Fee Schedule** United States Patent and Trademark Office, 2022

⁶Legg, James. (2020, January 28). **NFL's Super Bowl trademark is why some companies call it 'the big game'**. Fox Business

⁷(2020, December 16) **Fact Sheet: Protecting a Trademark**. International Trademark Association.