

How To Protect Your Good Name

Several years ago, the general counsel of the Coca-Cola Bottling Co. delivered to an audience of trademark owners a message that applies to entrepreneurs at every stage of business. He said that even if every physical asset of his company, from buildings and office equipment to trucks, were totally destroyed, in a matter of days the company could borrow enough money to rebuild from the ground up on the strength of the Coca-Cola trademark alone. Unfortunately, his important lesson—that this intangible trademark right is an extremely valuable asset for any business—remains lost on many small-business owners.

The importance of a trademark is not lost, however, on California entrepreneurs Julie Lobdell and Janet Taylor, owners of a Los

Angeles-based chain of cinnamon roll shops known as Bodacious Buns. When Lobdell and Taylor started out, they knew right away the name and image of their product and stores would be a key to their success.

"We spent quite a bit of time selecting our name. We wanted it to be right—and different," says Lobdell. "We knew 'Bodacious Buns' would be well received in Southern California, but we wanted to make sure it would not be too provocative or misunderstood in other parts of the country. We also wanted to make sure it would be ours to use without having to worry about bumping into another 'Bodacious Buns' along the way."

Friends and family around the country told the partners it was a great name, but Lobdell and Taylor didn't stop there. "We had our trademark lawyer check it out before we went ahead," says Taylor. And when they began using the name, the partners filed with the federal govern-

Mark Your Words

Safeguarding their Bodacious Buns business name was top priority for Julie Lobdell (left) and Janet Taylor who, unlike many hasty entrepreneurs, didn't have to learn from their trademark mistakes.



Photo © Susan Warmbo

BY ANDREW A. CAFFEY

ment to register the trademark.

Unlike Lobdell and Taylor, Phil Catron didn't make all the right moves. Catron's Naturalawn of America Inc. was making a name for itself; customers clamored for its services. Then the lawyer's letter arrived: "He told us in no uncertain terms that we had to cease using our company name," recalls Catron. "His client, a small-business owner in a state more than 1,500 miles from here, had registered a similar service mark for a lawn-care business

six years ago, before we began our operation." To rectify the situation, Catron purchased his competitor's service mark—a costly expense he hadn't planned on.

Trademark problems like Catron's are all the more painful when you know they could have been avoided. "The best advice we can give small businesses is to pick their marks carefully, check to see they are available for use and registration, file them with the U.S. Patent and Trademark Office, and then—

and this part is especially important—use them correctly," says trademark attorney Fred Hathaway in Washington, DC. "So many smaller companies simply don't understand what a trademark is, or how to present it in their materials."

"I think we made every mistake in the book when we started out," admits Marion Ballard, president of DataPlus Inc., a small software publisher in Washington, DC. "At that point, I couldn't have told you the difference between a trademark and a copyright—and we are a software publishing company, with every reason to know the difference."

"With our attorney, however, we took the steps necessary to copyright our products and register our products' trademarks. You bet we took steps to protect ourselves."

Make Your Mark

How do you choose a trademark? The experts recommend five steps:

1. *Select a distinctive word or phrase to identify your products and services.* Fanciful names or made-up words (like "Exxon" or "Xerox") and "arbitrary" marks ("Camels" for cigarettes) are the strongest types of trademarks. Generic words—common names for types of products like "automobile" or "software"—can never receive trademark protection. Most trademarks fall somewhere between these two extremes. If a term is merely descriptive of the product ("Honey Baked Ham" for hams or "Tender Vittles" for cat food) it can receive trademark protection only after a period of exclusive use, when it is said to acquire "secondary meaning." Many trademarks are suggestive of the product ("Uncola" for a non-cola soft drink or "Habitat" for home furnishings) and are the most common type of trademark you see in the marketplace.

2. *Take the time to work with a qualified trademark attorney.* Then follow the advice you receive. Before adopting a mark or starting production of any product bearing a new mark, have your lawyer conduct a search to determine whether the mark is available for registration.

3. *Seek federal registration.* "Registration with the U.S. Patent and Trademark Office gives you two basic advantages," says attorney Hathaway. "First, you will be in a far

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stronger legal position to stop people from infringing on your mark: second, conflicts are considerably less likely to occur down the road."

4. *Use trademarks as trademarks.* "This is vital," says San Francisco trademark attorney Kennedy A. Brooks. "A trademark should always be used as an adjective followed by a noun. A trademark should never be

"Always present a trademark so it stands out from the context of surrounding words, using bold lettering, color, capital letters or quotation marks," adds Brooks. "And make sure your use is consistent."

It may sound obvious, but once you register a trademark, be sure to use it. If not used, a registered mark can be ruled abandoned.

"So many smaller companies simply don't understand what a trademark is, or how to present it in their materials."

used as a noun or a verb."

Correct: "Buy the best; buy Ajax widgets." (trademark used as an adjective)

Incorrect: "Get the best; pick up a few Ajax for your next party." (trademark used as a noun)

Incorrect: "Want some fun? Ajax your next party." (trademark used as a verb)

5. *Tell the world the mark is your own.* "It is important to use the appropriate notice symbols," says Bob Sacoff, a Washington, DC, trademark attorney. "TM," which stands for "trademark," is used to indicate a word, design, symbol or slogan that identifies a brand of tangible product. "SM," which stands for "service mark," indicates a word, design, sym-

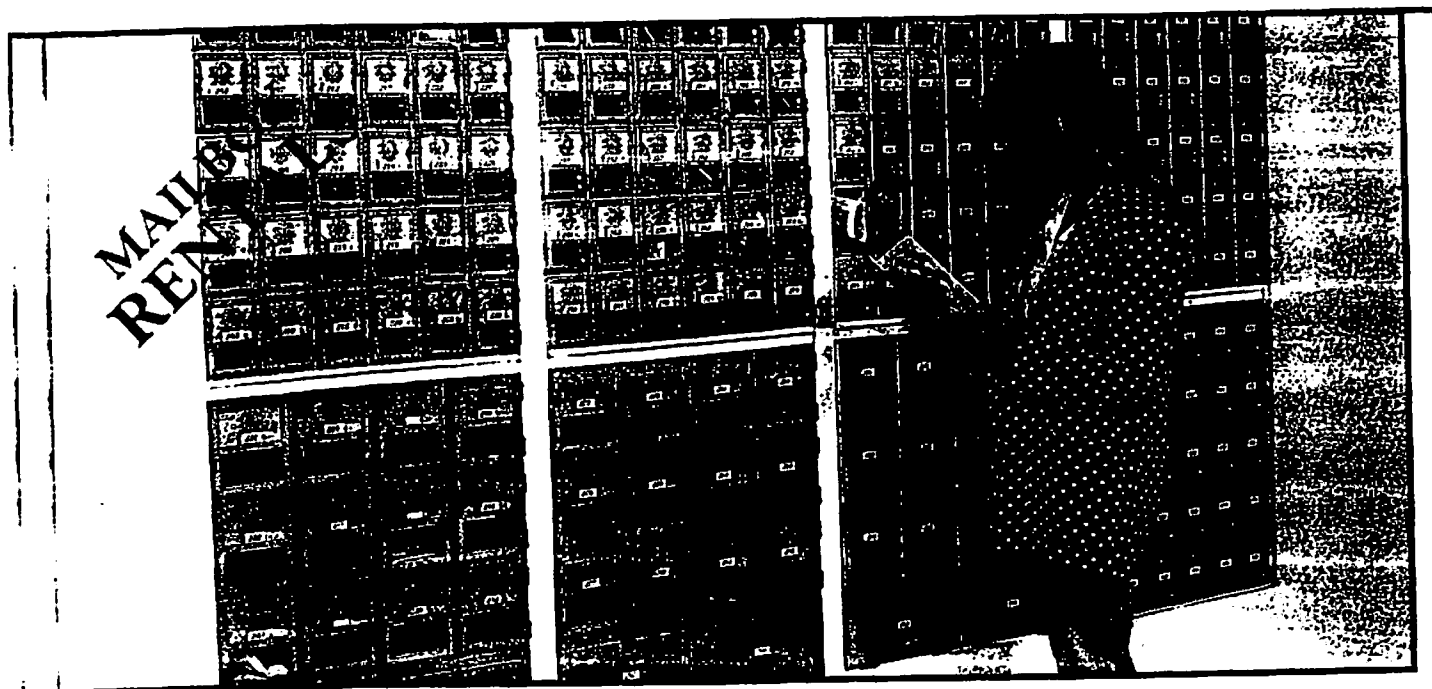
bol or slogan that identifies an intangible service. ® stands for "registered," indicating a trademark or service mark is registered with the Patent and Trademark Office.

Get The Edge

Smart entrepreneurs recognize that their trademarks give them an invaluable edge. In a growing service economy, with virtually every field bustling with competitors, the more quickly a small and growing business can establish its distinctive identity and graphic style, the easier it will be for customers to pick it out of the crowd. Trademarks embody a company's reputation, and they must be treated with care.

No one works harder than the entrepreneur to build a business reputation... and no one has as much to lose if that good name is taken away or soiled.

Andrew A. Caffey is an attorney and a partner in the Washington, DC, office of Venable, Baetjer, Howard & Civiletti, where he heads the firm's trademark practice group.



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