



HEW & BORDENAVE
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What is the Difference Between a Trade Name and Trademark?

A trade name is NOT the same as a trademark. While, both play a role in running a business and how it holds itself to the public they have different legal meanings and specific functions.

A trade name is an official name which the company does business under also more commonly referred to as “doing business as” or “DBA.” Sometimes you will also have it referred to as a fictitious name. A trade name does not provide brand identification, that would be a trademark.

Specifically, “trademark” means are any word, name, symbols, or device or any combination of those things that are used to identify and distinguish the goods of the person, including a unique product from those manufactured or sold by others, and to indicate the source of the goods, even if that source is unknown. A trade name is another name for a business, whereas a trademark is something being used to identify goods coming from the business.

Why do people Confuse these Two Terms?

Many businesses use their name when identifying their goods and services. Therefore, when a trade name is used in that manner it also functions as a trademark. Additionally, a business may use multiple names and/or marks as part of their marketing strategy. Consider this example:

If you had a corporation, Example Inc., that registered a trade name Example Productions that produced and sold multiple goods, it might consider registering a trademark for Example Products. Further, if these goods required maintenance, the corporation may consider registering Example Products Maintenance for a service, and as such, for Hawaii’s law, that would be a service mark.

Note that registration for a trade name is at the state level, and that trademark registration can be at the state level and/or the federal. Further, state registration, depending on the state, distinguishes between trade and service marks, whereas for federal they are one the same. So it is easy to get confused dealing with the marketing, intellectual property law, and registration system issues.

Should a I Register a Trade Name or Trademark?

Registering a trade name or a trademark goes not grant ownership. Use before the public grants ownership rights. Some businesses try to register names or marks thinking they are reserving them for later use, only to have another business petition a revocation for nonuse. You may be wondering, why bother registering if use is what grants ownership rights?

Registration means you provide notice to all others you are claiming the rights to use. Secondly, it may let you know if there are others with same or similar names or marks to avoid you being the infringer. Finally, registration may avail you to certain remedies under the law, such as an injunction, destruction of imitations, collecting the profit derived from imitations, up to three times in lost profits and damages, and/or attorneys’ fees. Obviously, you may not get all those remedies in a lawsuit, as it depends on the facts of the case, but it should highlight the need to consider registration as a tool for protecting your business’s names and brands.