

DON'T BE A VICTIM OF BRAND IDENTITY THEFT ON THE WEB

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Everywhere consumers look, they come into contact with brands. Even small children recognize notable brands such as the star at Macy's, the target symbol for Target, McDonald's golden arches, and the Nike swoosh. I am personally amazed every time I hear my five-year old refer to a business by its trademark. When she tells me that she wants to eat at "the place with the green swirly thing," I always know that she wants to go to Rubio's.

A business can be defined by its brand, which can be protected through a trademark. Trademarks have always been valuable to the brick-and-mortar businesses. The marks appear on signage, in the newspaper, on magazines, in flyers and on products. The consuming public sees the company's trademark and associates the business' products or services with this brand. Now in more recent times, brands have become extremely valuable to businesses with an Internet presence. It has taken a while for the courts to catch up with this trend; however, they are starting to provide new protections to trademarks and trademarked products on the Internet.

The advent of the Internet generated an explosion of online advertising and an entirely new channel of commerce as merchants sought to profit from the marvel of this new means of communication. Businesses came to realize that Internet commerce could reduce the cost of overhead and increase the product visibility to the purchasing audience. Instead of just reaching out to the local community, merchants advertising on the Internet were able to reach out to the world.

The Internet, however, came with its own set of issues. As the popularity of



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the Internet increased, so did the need for intellectual property protection, particularly for trademarks. A trademark registration can protect your business' domain name, its advertising keywords, its meta tags and brands appearing on websites¹. Most businesses will attempt to secure domain names which contain their company name or brand. A business is able to protect against others securing domain names that are identical or confusingly similar to its brands or name by filing for trademark registration on those marks. If trademark protection is not obtained, it is nearly impossible to prohibit others, particularly foreigners, from utilizing one's valuable mark in their domain names.

Another value of trademark protection of a company's marks lies in Internet advertising. Many people who are looking for a product or a service will utilize an Internet search engine to assist in the process. The consumer merely types in a key term or phrase and the search engine goes out and searches existing websites through their meta tags or paid keyword listings. Search engines look

¹ Copyrights are also very valuable to protect unique website content

for keywords in places such as domain names, actual text on the web pages and meta tags, which are hidden HTML codes intended to describe the contents of the website.

One way search engines make a profit is by selling advertising links to keywords. An advertiser pays to have its advertisement displayed whenever certain keywords are used in search engines. When someone is looking for a product or service through a search engine, the list that is generated contains both natural search results and websites of advertisers who have paid for search engines to display their ads derived from keywords. The paid-for links generally appear at the top of the list. Generally, a consumer will click on the search result that appears at the top of the first page, making that a highly valuable location for a business to appear. In recent years, the courts have ruled that a competitor's use of another company's trademark as a keyword in search engine advertising constitutes a violation of the trademark owner's rights. This recent trend has made it even more important for a merchant to protect its valuable company names and brands through trademark registrations.

Overall, trademark protection allows businesses to prohibit others from unfairly profiting off of their valuable brands and company names and the goodwill that they represent. Filing for trademark registration is something to seriously consider when starting any new business or when trying to increase traffic to one's website for an existing business.

If you would like more information on this or other trademark issues, please contact Lisel Ferguson at 619.515.3207 or your regular Procopio attorney.