

Choosing and Protecting Your Business Name And Trademark

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Trademarks and service marks are important aspects of business operations. A trademark or service mark is a word, symbol, phrase or design that the public associates with the source of certain goods or services, such as the Nike swoosh symbol, or the name AT&T. The term “trademark” generally refers to a mark identifying the source of goods while the term “service mark” refers to the source of services.¹

Federal and state laws provide protection for these marks, recognizing that a business owner builds goodwill associated with a mark and the need to protect consumers’ abilities to distinguish among competing businesses. Generally, federal and state law recognize that the first business to use a particular mark acquires legal rights in that mark, including the right to prevent others from using that mark or a confusingly similar mark.

Physicians and physician groups should give careful consideration to choosing a new mark and protecting an existing mark. Only certain marks will qualify for legal protection under state and federal law, and a business may be held liable for using a mark that is already being used by someone else. Before adopting and marketing a chosen mark, a business should consider running a search through the state and federal trademark registers. Although these searches will not guarantee that a proposed mark will not be challenged, they do reduce the risk that a business will adopt, and potentially infringe upon, a mark that is already in use.

Once a business has adopted and is using a mark, the business should consider state and federal registration of the mark. State and federal registration of a mark serve as constructive notice of the registrant’s claim of ownership of the mark and entitle a registrant to certain rights and protections that are not available without registration. Because of the investment in a mark and the possibility of being held liable for infringing on another’s mark, business owners should give serious consideration when choosing a mark and in deciding what steps to take to protect it.

¹ Both will be referred to as “marks” herein.