

Why You Need to Conduct a Trademark Clearance Search By David P. Badanes, Esq.

You just started a new company or corporation or you have a new name you would like to use for the goods and services you sell. Voila, I'll use "GreatNewName" as my new name or as the name of the new goods/services, I intend to sell. However, before you put the cart before the horse, you should conduct a trademark clearance search to insure that "GreatNewName" is not already a registered trademark.

A thorough trademark search protects you in several ways:

- You will have greater confidence that your "GreatNewName" is available for your use
- You can order your marketing and advertising materials. For example: signs, brochures, catalogs, media advertising, internet advertising, seminars and trade shows
- You can start designing your logo and/or packaging for your goods or services
- In the event that a lawsuit is brought against you, then the trademark search will help to protect you against punitive damages.
- If your insurance includes coverage for legal expenses, then your insurance company should not be able to deny your coverage on the basis that you failed to conduct a preliminary trademark search.

Notably, if you rely only on a domain name search or by obtaining your corporate name with your State (for example registering your name as a corporation with the Department of State, Division of Corporations in New York) this is insufficient and inadequate to insure that "GreatNewName" does not infringe upon a competitor's trademark.

So what exactly is a trademark clearance search? It involves searching several databases, including the Patent and Trademark Office's catalogue of existing and pending trademarks, the Fifty State's list of registered trademarks and common law usage of names and marks.

A comprehensive trademark clearance search should be performed by a seasoned trademark attorney. An attorney can best analyze whether an existing name could present an issue of trademark infringement.