

## Beverly Thomas Rossi

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**From:** info@MyCorporation.com  
**Sent:** Wednesday, March 26, 2003 12:14 AM  
**To:** brossi@graphicmatter.com  
**Subject:** Analyzing Your Trademark



OUR SERVICES

### Analyzing Your Trademark:

"Can Your Trademark be Successfully Registered?"

Search Criteria: "**graphic matter**"

Thank you for using the FREE Trademark Search Tool at MyCorporation.com. Please read the contents of this email carefully as it contains important information about *Protecting Your Trademark, The Benefits of Registering Your Trademark, Assessing the Validity of Your Trademark, and an overview of the Trademark Registration Process.*

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### Trademarks & Service Marks Explained

A trademark is a word, phrase, symbol or design, or a combination thereof, that identifies and distinguishes the source of the goods of one party from those of others. A Service Mark is similar to a trademark but is distinguished in that it identifies and distinguishes the source of a SERVICE rather than a product.

Generally, the terms "trademark" and "mark" are used to refer to both trademarks and service marks.

### The Benefits of Registering Your Trademark

Owning and operating a small business can be one of the most rewarding experiences in your life. On the other hand, being an entrepreneur is also unyieldingly demanding. Current tasks such as preparing payroll or responding to customer complaints often take precedence over tasks that may appear to be less time-sensitive. Thus, items that are critical to the continued success of your business such as updating your business plan, reviewing your insurance policies, or registering your trademarks often get pushed onto the back-burner.

Unfortunately, successfully registering your trademark is an EXTREMELY TIME-SENSITIVE task. The filing date assigned to your trademark registration application can potentially determine:

1. Whether you have the legal right to stop someone else from

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infringing upon your trademark; or

2. Whether a third party has the power to literally '*Shut You Down*' by judicially RESTRAINING YOU from using a trademark that you had previously believed was legally yours!

The following is a list of just a few of the benefits enjoyed by owners of REGISTERED trademarks:

1. The legal right to display the "®" symbol with your trademark
2. Domain name conflicts are often solved QUICKLY, economically (without judicial proceedings), and in favor of the trademark owner.
3. In many cases, the owner of a registered trademark can receive a court-awarded judgment for THREE TIMES the amount of damages suffered.

### **Assessing the Validity of Your Trademark**

Before your desired mark can qualify for Federal protection, it must meet certain requirements as mandated by Federal Law. This area of law is referred to as the field of "Intellectual Property."

Because the laws governing Intellectual Property are very comprehensive, consultation with an experienced attorney is strongly urged. Unfortunately, budgeting concerns over legal fees often discourage small business owners from consulting with an attorney leaving no alternative but to "Do-it-Yourself!"

If you're a "do-it-yourselfer" (most small business owners are...), and you recognize the value of protecting your business and its trademarks, a careful review of the paragraphs below should increase your chances of successfully obtaining a trademark registration.

#### **SUBJECT MATTER**

To qualify for Federal protection, your trademark must be used for the purpose of **IDENTIFYING THE SOURCE** (your company) **OF THE PRODUCT OR SERVICE.**

#### **GOODS IN TRADE**

Trademark law DOES NOT protect incidental items you may use in conducting business (such as letterhead, invoices, and business forms). To successfully register your trademark, Your trademark must be used in association with a good or service offered by you or your company.

#### **SIMILAR TRADEMARKS**

After submitting your registration application for Federal review, an "Examining Attorney" will be assigned to your file. One of his/her initial steps during this examination of your application is to conduct a thorough search of registered and pending FEDERAL trademarks to ensure that if your trademark registration request is granted, the newly registered trademark

1. Will not CONFLICT with other EXISTING TRADEMARKS and;
2. Granting your registration request is not likely to cause confusion amongst consumers.

If an existing trademark is similar to the trademark you have submitted for review, the examining attorney will consider the following factors in making his/her determination:

1. Similarity of marks in their entireties appearance, sound, connotation and commercial impression.
2. Relatedness of the goods or services.
3. "Impulse" vs. careful, sophisticated purchasing.
4. The number and nature of similar marks in use on similar goods.
5. A valid consent agreement between the applicant and the owner of the previously registered mark.

### COMMON REASONS FOR REJECTION

A Trademark application may be rejected for any of the following reasons:

- ✗ **Immoral, Deceptive, or Scandalous Matter.**
- ✗ **Merely Descriptive of the Product or Service.** Trademark must serve to identify the source (You) of the goods or services and not merely as a description of the product.
- ✗ **Merely a Tradename.** Trademark is solely used as a tradename and is not used as an identifier of the source/manufacture of the goods/services.
- ✗ **Trade Dress is Merely Functional.** Matter that is FUNCTIONAL as a whole is not registrable. *Example: The words "CLICK HERE" displayed on a webpage to solicit a user action may be considered 'Merely Functional.'*
- ✗ **Merely Ornamentation.** A mark that is merely a decorative feature does not identify and distinguish the applicant's goods and, thus, does not function as a trademark. *Example: T-Shirt Stating "Dang I'm Good" was held to be communicating a message and not identifying the source of the goods.*
- ✗ **Merely Informational.** Slogans that are considered to be merely informational in nature or to be common laudatory phrases or statements that would ordinarily be used in business or in the particular trade or industry are not registrable. *Example: "Drive Safely"*
- ✗ **Title of a Single Creative Work.** The title of a single creative work will not qualify for trademark registration. *Example: Books, videotapes, films, theatrical performances, etc...*
- ✗ **Names of Artists and Authors.** A mark used solely as an author's name, even on multiple books, does not function as a trademark.
- ✗ **Names of Performing Artists Used on Sound Recordings.** Subject matter that, as used on sound recordings, merely serves to identify the artist or artists whose performance comprises the content of the recording cannot be registered as a trademark for the

recordings.

- ✗ **Model or Grade Designations.** A mark indicating the model or grade of product will not qualify for trademark protection.
- ✗ **Background Designs and Shapes.**
- ✗ **Scent or Fragrance as a Function.** Where the scent is the FUNCTION of the product (for example, perfume), that scent cannot qualify for trademark protection. However, where the scent is NOT functional and serves to indicate the source of the goods (i.e. the manufacturer), that mark MAY qualify for trademark protection (e.g. a brand of clothing that always has certain unique scent).
- ✗ **Mark contains a Flag or Other Insignia of the United States, a State or Municipality, or Foreign Nation Name.**
- ✗ **Portrait or Signature of Particular Living Individual or Deceased U.S. President Without Consent.**
- ✗ **Merely a Surname.**

### **So...You Think Your Trademark is Eligible?**

Once you or your attorneys have determined that your mark is eligible for trademark protection, the next (AND MOST CRUCIAL) step is to perform a THOROUGH search of public records to locate similar trademarks.

**Although the majority of trademarks in existence are NOT registered, owners of UN-REGISTERED trademarks still have legal rights to the EXCLUSIVE use of their trademarks.**

Therefore, you must search ALL OF THE FOLLOWING public records sources BEFORE submitting your trademark registration application.

- ✗ Registered Federal Trademarks Principal Register.
- ✗ Registered Federal Trademarks Supplemental Register.
- ✗ Pending Federal Trademark Registrations.
- ✗ State Trademark Registrations (NATIONAL--for EACH state).
- ✗ Unregistered Trademarks (Common Law Trademarks).
- ✗ County Filings (NATIONAL--for EACH state).
- ✗ City Records (NATIONAL--for EACH state).
- ✗ State Licensing & Regulatory Boards (NATIONAL--for EACH state).
- ✗ The Yellow Pages (NATIONAL--for EACH state).
- ✗ The White Pages (NATIONAL--for EACH state).
- ✗ Domain Name Registrars.

**NOTE:** Searching Public records for multiple states and jurisdictions is an ENORMOUS task. Many public records search firms (such as MyCorporation.com) can perform the search for you and provide you with a national report for less than \$200.

[CLICK HERE](#) to learn more about Trademark Search Reports that include records from **almost every U.S. State & County.**

### **Reviewing Your Search Results**

Once you have completed the search phase of your trademark analysis, you must review the results.

If you'd like to learn about "REVIEWING PUBLIC RECORDS for Trademark conflicts" in our next month's issue, please submit your vote via the voting tool at the top right of this newsletter!!!

### **The Application Process: a VERY Brief Overview.**

- ✍ Trademark Applicant (you) prepares and submits the application to the USPTO (United States Patent & Trademark Office).
- ✍ An "Examining Attorney" is assigned to your file.
- ✍ Examining Attorney reviews your application for deficiencies.
- ✍ Examining Attorney searches Federal Registered and Pending Trademark databases for similar or conflicting trademarks.
- ✍ Examining Attorney issues a Letter or "Action."
- ✍ Applicant is notified via U.S. Mail of remaining steps or the application is rejected.
- ✍ Applicant conducts an Interview with Examining Attorney to discuss the Examining Attorney's decision or "Action."
- ✍ Applicant Amends the application or abandons the trademark.
- ✍ Examining Attorney issues a "Final Action" ...hopefully, this "Final Action" is a "REGISTERED" status.

### **Trademark Facts You Should Know!**

**CITIZENSHIP.** U.S. citizenship is NOT required to obtain a federal registration?

**NO REFUNDS.** If Your Trademark Application is rejected, the USPTO will NOT issue a refund.

**PROCESSING TIME.** If your mark is relatively free from complex legal issues and you submit your application form pursuant to Federal guidelines, the you may expect to receive confirmation of the successful registration of your mark within 9 to 12 months.

**PERIOD OF PROTECTION.** Current Federal Laws provide Federal protection of new Trademarks for a period of 10 years. Thereafter, the mark must be renewed by the applicant or else it will be considered expired or abandoned.

### **Trademark Information, Tools, and Resources**

[FREE Trademark Search.Click Here](#) to access the FREE trademark search tool at [www.MyCorporation.com](http://www.MyCorporation.com) and start searching for potential trademark infringers or third parties with superior rights to your trademark.

[Search Un-Registered Trademarks.Click Here](#) to learn more about searching Public Records Nationwide and how our staff can assist you by compiling a consolidated report with information gathered from thousands of different sources across the United States.

[Prepare a Trademark Application.Click Here](#) to learn how our staff can assist you by preparing your Federal Trademark Registration Application for UNDER \$100.

--Good luck in all your business endeavors!

Philip K. Akalp, Esq.  
CEO / Co-Founder  
MyCorporation Business Services, Inc.

### **ABOUT THE AUTHOR**

Philip K. Akalp is a licensed attorney and a member of the California State Bar.

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