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## Are you maximizing your company's brand potential?, Charlotte Business Journal Leadership Trust

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Christina Davidson Trimmer

### MEDIA CONTACT

Wendy M. Byrne  
wbyrne@shumaker.com

Over the past 18 months, as e-commerce has surged, trademark rights have become an increasingly valuable business asset for companies to wield as both a sword and a shield. Coupled with a recent surge in U.S. trademark applications by China-based applicants, it is becoming more difficult for U.S. companies to stake out their territory. So where do you start to make sure your company's trademark protection is maximized, and how do you police unauthorized uses of your trademarks?

### Know what you own

The first step in maximizing your company's brand potential is to know what trademarks you own. Trademark rights are based on use. What name, phrases, symbols or even colors does your company use to identify itself and its goods or services in the eyes of the consuming public? Conducting a trademark audit sounds daunting, but it boils down to understanding and identifying your company's brand, both for the company as a whole and the goods and services you offer.

Trademarks signify your company's identity to the consuming public. When my son was a toddler, at the same time he was learning to identify letters and numbers, he could also identify frequented stores, family members' cars and favorite restaurants by the business's logo. Our brains are designed to make associations and connections. Who would have thought trademarks involved neuroscience? Identifying, and defining, your company's brand identity is a core value of any business requiring only nominal upfront investment.

### Offensive strategy

The next step is to seek protection for the marks you identify in your audit. A qualified trademark professional can help you assess which marks you should seek registered trademark protection for, advise as to where to seek registration (federal, state, foreign or a combination) and strategize on the broadest brand protection for your company.

The United States Patent and Trademark Office has seen trademark applications surge to unprecedented

levels in 2021 — approximately 63% over last year, as of June 2021. While the rise in e-commerce during the pandemic has certainly contributed, as previously stated, there also appears to be a dramatic increase in U.S. trademark application filings by China-based applicants. This intense rise of interest in U.S. trademark rights by foreign applicants is a strong indicator that U.S. companies should be seeking to increase their own trademark protection, not only in the U.S. but globally.

Too often, I see businesses wait too long to seek federal trademark protection for their trademarks only to run into complications that limit their rights — complications that would not otherwise have been an issue had the business timely sought protection for those assets. If you want the broadest protection possible, it's best not to underestimate the value that trademarks play in your business and seek to protect that value from the start.

### **Defensive strategy**

Another effect of the pandemic-related rise in e-commerce is the increased utilization of competitive search engine optimization (SEO) marketing. There are right ways and wrong ways to employ a competitor's trademarks to increase a company's page ranking in popular search engine algorithms. If a third-party competitor is using your company's trademark in an improper way, it may be trademark infringement, and they may be liable to your company for damages. It's important to know when a competitor is infringing your trademark and what your recourse may be, and equally important to know how to optimize your own company's SEO marketing without exposing your company to liability for infringing a competitor's trademark.

There are some easy ways to protect your trademarks against improper use by competitors in SEO marketing. Search engine companies, such as Google and Bing, have internal complaint processes to report trademark infringement. In some instances, this complaint process can be a cost-effective and quick resolution for trademark owners. One drawback, though, is that these complaint processes are sometimes limited. Google is not an arbiter, so the infringement must be exact, and oftentimes, competitors are savvy enough to avoid these types of complaints, requiring more formal legal action.

Global supply chain issues have also led to an increase in counterfeits sold through third-party marketplaces, like Amazon, Alibaba and eBay. Each of these third-party marketplaces also has brand registries or "verified rights owner programs" where you can register your trademarks for these marketplaces to help you protect your brand against counterfeit and infringing goods.

### **Concluding thoughts**

Maximizing your company's brand potential starts with knowing what you own and taking steps to protect and police those rights. I wish I could say that it is as simple as that — nothing is ever simple — but it is at least a great place to start in making sure your company's trademarks are protected.

*Christina Davidson Trimmer is an Intellectual Property Law Partner and the Innovation Lab Chair at Shumaker, Loop, & Kendrick, LLP.*