

# Trademark Selection Cheat Sheet

## A TRADEMARK IS YOUR BRAND. IT LASTS FOREVER.

A trademark is any name, word, symbol, sound, color, or device that identifies the your business as being uniquely yours. Trademarks make it easy for consumers to recognize your brand, assess quality and distinguish it from other brands in the marketplace. Choose strong brands. Avoid weak brands.

### A brand is strongest when

- It is not being used by anyone else, making it unique to you.
- It is available for use that will encompass your expanding business, not just your needs for today.
- It is fanciful (a made up word), or arbitrary (a real word applied non descriptively).

### A brand is weakest when

- It is being used by lots of third parties, even if it's not in the same field, because you will be less likely to expand it over time, and you often cannot effectively police it.
- It is descriptive (describes what you do), because you will not be able to stop competitors from using the term to describe their goods.
- It is similar to a competitor's mark, because you could contribute to unintentional consumer confusion.

## If You Don't Like Them, They Probably Won't Like You

If you select a mark and discover a third party using it, ask yourself whether – if you already had rights in the mark – you would seek to stop their use. If the answer is “yes,” don't put your head in the sand. Consider another mark.



## **Policing And Enforcing Are Part Of The Cost**

Weaker marks require more policing and enforcement against others than do stronger marks. Choose strong marks at the outset to avoid added expense over time.

Securing rights in a trademark means you have a legal duty to police and enforce your trademark against third party use. Remember, consumers have a right to rely on the reputation of a trademark to determine the quality of the goods or services. If you don't enforce your rights against others, your trademark becomes diluted, and your brand becomes useless.

## **Selection Is A Multi-Step Process**

Use the attached trademark sheet to start your process, but don't get hitched to a favorite mark until you've fully reviewed the potential issues with it. Wise selection now means lower cost later.

## **Did You Know**

- Taglines and slogans are also trademarks.
- You can file to register a trademark before you are using it.
- You may use the ™ symbol as soon as you start using the mark, but the ® is reserved for registered trademarks.