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THE EVOLVING LANDSCAPE OF TRADEMARK PROTECTION



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Something I didn't anticipate in 2004 when I first starting practicing Trademark Law, was just how big an impact the internet would have on this area of the law. Nowadays many businesses literally live and die by their internet presence, whether its marketing and running ads through Google, Facebook, Instagram and TikTok, or selling through online marketplaces like Amazon or Etsy. Although the law hasn't always managed to keep up with the rapid pace of technology, knowledge of the issues and your options can help you keep up even when the law cannot.

For businesses trading the murky waters of selling on Amazon, consideration should be given to enrolling in Amazon's Brand Registry program. Amazon Brand Registry provides brand

owners with enhanced marketing features and brand protection tools. Amazon has recently amended its Brand Registry requirements to allow owners of pending trademark applications to enroll prior to registration in certain cases.

Even for businesses that don't rely heavily on Amazon, most businesses increasingly use social media for marketing, connecting with customers and ads. Infringements on social media are commonplace which can have serious adverse effects on your ability to control your brand and brand story. All social media sites have trademark enforcement policies that allow a brand owner to request removal of an infringing account. Mentioning in the request that you have a registered trademark greatly increases the chances that the social media site will act favorably on your request and remove the infringing account.

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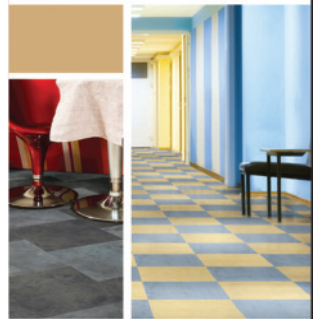
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TRADEMARK PROTECTION

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Another interesting issue that has arisen is with "keyword" advertising. Occasionally a competitor will purchase your trademark (or you will purchase theirs) as a keyword in an internet advertising campaign (for example, in Google Ads). The end result is that when a potential customer "Googles" the trademark expecting to find the trademark owner's website, the competitor's "sponsored ad" appears instead. Courts have typically been reluctant to take action based on such advertising methods, but it's certainly an area where lines can be crossed — so it's wise to tread carefully.

In recent years many internet scams have also popped up targeting brand owners. For example, scammers (often located in China) have begun monitoring trademark filings at the United States Patent and Trademark (USPTO) for the purpose of registering the trademark as part of a domain name as soon as they see the trademark filing in the USPTO's public database. It's no fun to file a trademark application only to get an email a few days later offering to sell you yourtrademark.com! Fortunately, this one's easy to avoid simply by making sure all of your domain names are secured

prior to filing a trademark application.

Another scam to be aware of relates to many of the online companies offering trademark filing and registrations services. Recently the USPTO has been cracking down on improper submissions by some of these companies, including by issuing sanctions cancelling the applications and registrations of trademark owners who unwittingly fell victim to the fraud. Obviously, it makes sense to know who is filing your trademark applications.

The issues mentioned above and many others (and likely more to come) have convinced me more than ever that taking steps to secure and bolster your trademark rights as early as possible is well worth it. To this end, I strongly encourage all businesses to federally register at least their most important trademarks and service mark with the USPTO. The relatively modest effort and expense involved will prove well worth it if you ever find yourself needing to enforce your brand in the real world, on the internet, the metaverse or wherever the future may take us.

For additional information, please call 610.935.8600 or email: mp@petocklaw.com and visit www.petocklaw.com.