

Trademark Infringement Checklist: Protecting Your Brand

This comprehensive guide provides a battle-tested toolkit for spotting, preventing, and combating trademark infringement. Developed from decades of experience, it offers practical strategies for businesses of all sizes to protect their brand identity. The checklist covers key aspects of trademark infringement, its implications, and actionable steps to fortify your trademark defenses.



Section 1: Trademark Infringement

What's the Big Deal About Trademark Infringement, Anyway?

In legal speak, trademark infringement happens when some unauthorized party uses a trademark that's identical or "confusingly similar" to your business' mark. It's more than just someone copying your homework. It's like someone stealing your identity, setting up shop as you, and potentially ruining your reputation in the process. If you don't exercise your right to stop trademark infringement when you can, you might be foreclosed from stopping the infringement later. And if infringement becomes rampant, a court could determine that you have abandoned your rights in the mark.

But let's break that down with a real-world example.

Remember the time when Adidas took on Skechers for creating a shoe that looked suspiciously like their iconic Stan Smith design? That wasn't just about shoe design. It was about Adidas protecting a mark that represented their brand identity. The court considered factors such as the likelihood of consumer confusion - which is a crucial element in trademark infringement cases. For the Stan Smith shoe, the court found a substantial likelihood of confusion between the parties' products. And Skechers had to pump the brakes on their lookalike kicks.

Types of Trademark Infringement

Trademark infringement can manifest in various forms:

Direct Infringement

When a party uses an identical or sufficiently similar mark on competing goods or services.

Contributory Infringement

When a party intentionally induces or facilitates someone else's direct infringement.

Reverse Confusion

When a larger, more powerful company uses the mark of a smaller, less known senior user, causing consumers to believe that the less-known senior user is actually the infringer.

Counterfeiting:

When a third party intentionally applies an identical or nearly identical mark to goods that are identical to your goods.

Cybersquatting:

Registering, trafficking in, or using a domain name with bad faith intent to profit from the goodwill of a trademark belonging to someone else or sell it back to the trademark owner for a tidy profit.



Section 2: Protecting Your Trademark: A Practical Checklist

1. Proactive Monitoring

For Both Products and Services:

- ☒ Set up Google Alerts for your trademark and close variations.
- ☒ Regularly monitor social media platforms for unauthorized use of your mark.
- ☒ Consider investing in professional trademark watching services.

For Products:

- ☒ Regularly scan e-commerce platforms (Amazon, eBay, Alibaba, Etsy, etc.), social media websites and other third-party online store sites for potentially infringing products.
- ☒ Monitor product listings in online and offline marketplaces.

For Services:

- ☒ Keep an eye on service directories and review sites (Yelp, Angie's List) for similar service names.
- ☒ Monitor domain name registrations for similar service names.

Pro Tip: Don't just look for exact matches. Savvy infringers often use subtle variations or misspellings to fly under the radar.



2. Document Everything

For Both:

- ☒ Maintain detailed records of your trademark use, including dates and geographic areas.
- ☒ Capture screenshots or physical evidence of any potential infringements you encounter.
- ☒ Keep a comprehensive log of all enforcement actions taken.

For Products:

- ☒ Document product packaging and marketing materials that use your trademark.
- ☒ Keep records of product distribution channels and retail locations.

For Services:

- ☒ Document advertising and promotional materials for your services.
- ☒ Keep records of where and how your services are offered (e.g., online, specific locations).

3. Educate Your Team

For Both:

- ☒ Train employees to recognize potential infringement.
- ☒ Establish clear protocols for reporting suspected infringement.
- ☒ Develop guidelines for proper use of your own trademarks to ensure consistency.

For Products:

- ☒ Train sales and distribution teams to spot counterfeit products.
- ☒ Educate retail partners about your brand protection efforts.

For Services:

- ☒ Train customer-facing staff to be aware of potential service name confusion.
- ☒ Educate partners or franchisees about maintaining service quality to protect the brand.



4. Build a Strong Online Presence

For Both:

- ☒ Secure domain names related to your trademark.
- ☒ Maintain active social media accounts under your brand name.

For Products:

- ☒ Register your mark with Amazon's Brand Registry and similar e-commerce platforms.
- ☒ Utilize digital watermarks or other tech solutions to distinguish genuine products online.
- ☒ Consider using trademarks (TM) alongside your brand name in digital contexts.

For Services:

- ☒ Claim your business on major review sites and service directories.
- ☒ Consider using service marks (SM) alongside your brand name in digital contexts.

5. Act Swiftly, But Strategically

For Both:

- ☒ Assess the severity and impact of each potential infringement.
- ☒ Consult with legal counsel before taking action.
- ☒ Consider graduated responses: from informal requests to cease and desist letters to online takedown requests to litigation.

For Products:

- ☒ If the mark is federally registered on the Principal Register, register the mark with U.S. Customs and develop relationships with customs officials to intercept counterfeit goods.
- ☒ Consider working with e-commerce platforms to remove infringing product listings.
- ☒ Consider consulting federal law enforcement and government agencies if the infringement is counterfeiting, large scale and/or dangerous.
- ☒ Hire an investigator to collect evidence of the infringer and the infringement.

For Services:

- ☒ Monitor for unauthorized franchising or licensing of your service mark.
- ☒ Be prepared to address reputation management issues that may arise from confused consumers.



6. International Considerations

For Both:

- ☒ If you operate globally, register your trademark in key markets.
- ☒ Be aware of 'trademark squatters' in first-to-file jurisdictions.
- ☒ Stay informed about international trademark agreements and their implications for your business.

For Products:

- ☒ Understand international product standards and how they might affect your trademark use.
- ☒ Be aware of gray market goods and how they might impact your brand in different markets.
- ☒ Register your mark with foreign Customs and law enforcement agencies.

For Services:

- ☒ Research service industry regulations in target international markets.
- ☒ Consider how your service mark might translate or be perceived in different cultures.

Conclusion: Empowering Your Brand's Defense


Protecting your trademark is more than a legal obligation—it's a crucial business strategy and a requirement for avoiding a legal abandonment of the mark. In our decades of practice at Dunlap Bennett & Ludwig, we've seen how robust trademark protection can be the difference between a brand that thrives and one that barely survives.

Remember, your trademark is the face your business presents to the world. By staying vigilant, acting decisively, and leveraging the strategies outlined in this guide, you're not just protecting a name or a logo—you're safeguarding the very identity of your business.

The world of trademark law is complex and ever-evolving, but you don't have to navigate it alone. If you have questions or concerns about your trademark protection strategy, don't hesitate to reach out. At [Dunlap Bennett & Ludwig](#), we're committed to helping you build and maintain a strong, resilient brand in today's competitive marketplace.

Your brand is your business's most valuable asset. Protect it fiercely, nurture it carefully, and watch it propel your business to new heights.

Contact us today to schedule your low-cost consultation and turn your innovative vision into a commercial reality.

 To learn more about Dunlap Bennett & Ludwig and how we can help you, call today at **888-306-4030** or email us at clientservices@dbllawyers.com.

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