

Trademarks 101: What Business Advisors Need to Understand When Guiding Clients

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As a business advisor, your role often involves helping clients make strategic decisions that affect their growth and risk profile. One area that frequently intersects with broader advisory issues is trademark law. While business advisors do not typically manage trademark filings or enforcement, understanding the fundamentals helps you identify when trademark considerations should be part of the conversation with your clients and when to involve legal professionals.

Why Trademarks Matter in Advisory Contexts

Trademarks are critical to brand identity and business value. They influence marketing strategies, product launches, and even transaction structures. For example, if a client is investing heavily in a new brand or entering new markets, trademark clearance and protection should be addressed early. Similarly, during mergers or acquisitions, trademark ownership and registration status can significantly affect valuation and deal terms.

Recognizing Existing Rights and Risks

Clients often assume they need to “get a trademark” or have formal registration to have trademark rights, but rights can arise through the use of a trademark in commerce – simply by selling products or rendering services under a trademark. Business advisors should be aware of this so they can flag potential issues — such as whether a client may already have rights in a brand name or whether a brand might risk infringing on someone else’s trademark. These are signals to recommend a legal review.

Advantages of Trademark Registration

Even though your clients have trademark rights from using a trademark, federal registration conveys many benefits, including nationwide rights, presumptive ownership, and easier enforcement on platforms like Amazon or TikTok Shop. It also enables recording with U.S. Customs to block counterfeit imports. Advisors should understand these benefits so they can guide clients to consider trademark registration when investing in brand development, expanding geographically, or entering online marketplaces.

Trademark Risks in Broader Business Decisions

Trademark conflicts can derail product launches or lead to costly litigation. When advising on branding, domain acquisitions, or marketing campaigns, advisors should ensure that trademark clearance is part of the planning process, typically by recommending a qualified trademark attorney. In M&A transactions, confirming trademark status and chain of custody is a key part of due diligence.

Monitoring and Enforcement

Trademark owners can lose or weaken their rights if they do not take steps to prevent third parties from infringing (whether willful or innocent) and from cybersquatting. Valuable brands should be monitored for these activities. But advisors should be aware that enforcement strategies can affect brand reputation. While cease-and-desist letters are common, tone matters; overly aggressive enforcement can lead to public backlash or legal counterclaims. This is another area where legal counsel should take the lead, but advisors can help clients weigh business risks and reputational considerations.

Key Takeaways for Advisors

For advisors, the most important takeaway is that trademarks should be viewed as a strategic asset, not just a legal technicality. Your clients are well-served if you can recognize when trademark issues intersect with business decisions and guide your clients toward qualified trademark counsel when warranted. By doing so, you can help clients protect their brands, avoid costly disputes, and strengthen the long-term value of their businesses.