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# Trademark Infringement

## HOW IT HAPPENS, AND HOW TO STOP IT

**HOW VALUABLE IS YOUR BUSINESS** or product name? Most small and mid-size businesses aren't aware of the value of protecting trademarks. When the focus is on making payroll, monitoring sales, providing quality customer service and reaching financial projections, it might not seem like a top priority to police the web for thieves.

However, it ought to be. Others steal your name to hurt you. Such theft has an immediate impact on your sales, retentions and service costs — which pounds your bottom line. So, as someone who represents both the infringed and the infringers on a regular basis, I offer the following comments.

### How does it happen?

You may not know how to find or recognize trademark theft. It is likely designed to avoid detection. For example, if someone steals your name and uses it in a search engine pay-per-click (PPC) campaign, the thief might not run the ad in the geographic location of your company headquarters. You won't see the advertisement in your state (with a few exceptions), but everyone else in the world will.

### Who does it?

Anyone could hijack your name — from the well-respected Internet companies that use popular terms to drive traffic with no attempt to filter out trademarks, to the 15-year-old affiliate marketer in South America

who launches websites embedded with your name in content and tags. Don't forget about your competitor down the street who might use a misspelled domain name that resembles your URL or the competitor you haven't met — perhaps in Europe — who buys PPC ads using your name.

### How do they do it?

The most troublesome and difficult to combat are the "hit and run" campaigns that use seemingly untraceable email marketing techniques, short-lived websites and domain name "tasting." There are an infinite number of techniques in use today and more being developed for tomorrow. Thieves always try to stay ahead of the game.

### Why do they do it?

Consider that the essence of trademark protection is to try to ensure the public is not confused into thinking another business is your business. The first motivation for a trademark infringer is obvious: To make money. Infringers do this by direct competition against your company, by acting as affiliate marketers or lead brokers of your competitors or by selling the leads they generate.

The second reason for such theft is more in the category of unfair competition than pure trademark infringement. Sadly, it has received virtually no attention in the media

though it reflects a far more nefarious motivation: Business sabotage. Embarrassing sites that look like your business are launched, "your" business sends out 10 million emails and "your" employees post outrageous and embarrassing comments under your company name.

### What should you do?

The odds your name will be stolen are high. The odds it will be sabotaged are low. For every 1,000 trademark complaints we receive, perhaps 10 involve sabotage. One percent is an acceptable risk to some, but not to others.

Regardless of your level of concern, there is no justification for not policing your names if you are serious about your business. Register the names with the U.S. trademark office and perhaps one or two other offices. Consistently review the PPC ads and organic search engine results (including blogs and forums) using a variety of search terms. Participate in an "alert" system. Be prepared to act promptly to go on the attack if the situation calls for it.

Do the right thing at the right time, and the infringers will move on to an easier mark. ■

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