

Basic Trademark Information for Farm Marketing*

Introduction:

A trademark is a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs, that identifies and distinguishes the source of the goods of one party from those of others. A service mark is the same as a trademark, except that it identifies and distinguishes the source of a service rather than a product.

Federal trademarks are governed by the Lanham Trademark Act, 15 U.S.C.A. §1051 and in Pennsylvania by 54 Pa. C.S.A. §§1101-26, the Pennsylvania Trademark Act. A Pennsylvania trademark will protect the rights to produce and distribute a product in the state of Pennsylvania, but a federal trademark is better for goods that might be sold in interstate commerce. Pennsylvania trademarks are cheaper, less complicated to obtain, and more expeditious than federal trademarks, but they run out after five years and need to be renewed.

A federal trademark needs to be renewed after ten years and is administered by the U.S. Patent and Trademark Office (USPTO). They cost \$300-\$400 rather than the \$50 application fee for the Pennsylvania trademark, and the USPTO often takes years to register trademarks.

The rights for establishing a trademark are based on the legitimate use of the mark. However, owning a federal trademark registration on the Principal Register provides several advantages, e.g., constructive notice to the public of the registrant's claim of ownership of the mark; a legal presumption of the registrant's ownership of the mark and the registrant's exclusive right to use the mark nationwide on or in connection with the goods and/or services listed in the registration; the ability to bring an action concerning the mark in federal court; the use of the U.S. registration as a basis to obtain registration in foreign countries; and the ability to file the U.S. registration with the U.S. Customs Service to prevent importation of infringing foreign goods.

Information on the Pennsylvania Trademark Process:

A Pennsylvania trademark is filed by completing form DSCB:54-1112. Trademarks are effective for a term of five years from the date of registration. Application to renew for a similar term, must be made on form DSCB:54-1114 (Application for Renewal or Assignment of Registration of Mark) within six months prior to the expiration of such term. The trademark application must contain the following information:

- The trademark name must be available for use in Pennsylvania.
 - The name of the applicant and the jurisdiction if the applicant is a corporation.
 - The residence, location or place of business of the applicant. A Commercial Registered Office Provider may not be used in lieu of an address.
 - A statement as to the name and description of the mark. A facsimile of the mark to be registered must accompany the application.
 - A specification as to the general class of goods or services. These classification are set forth in 54 Pa. C.S. Section 1103. (Pennsylvania uses the same classification system as the USPTO, so tomatoes will be class 031 for each.)
 - A listing of the goods or services with which the mark is used and the mode and manner in which the mark is used in connection with such goods and services.
 - The date when the mark was first used anywhere.
 - The date when the mark was first used in this Commonwealth by the applicant or the predecessor in title of the applicant.
 - The application must be signed by the applicant.
- The fee to register in PA is \$50, and to renew is also \$50. The assignment fee is also \$50.

Information on the Federal Trademark Process:

The U.S. Patent and Trademark Office issues federal trademarks, which protect products for ten years, provided the paperwork remains up to date.

* Written by Abby Christine Foster, Legal Research Assistant, JD Candidate, Penn State Dickinson School of Law Agricultural Law Resource and Reference Center.

The first thing to do is to search the Trademark Electronic Search System (TESS) on www.uspto.gov to see if the desired trademark is available. There is an application available online, check it for completeness, and file it over the Internet using the Trademark Electronic Application System (TEAS), at <http://www.uspto.gov/teas/index.html>. One can also respond to Office actions and file notices of change of address and many other documents through TEAS.

The status of an application can be checked through the Trademark Applications and Registrations Retrieval (TARR) database at <http://tarr.uspto.gov>.

If internet access is unavailable, the Trademark Assistance Center number is 1-800-786-9199 (or 1- 571-272-9250) to request a paper form. For further information about applying for a trademark registration, see Basic Facts about Trademarks at <http://www.uspto.gov/web/offices/tac/doc/basic/>.

About three weeks after filing, applicants receive a receipt for their applications. Beyond that, it may take the Patent and Trademark Office (USPTO) a year to several years to register an applicant's trademark. The USPTO advises applicants to check on the status of their applications every six months, either online at <http://tarr.uspto.gov/> or by calling the Trademark Assistance Center at (571) 272-9250 or (800) 786-9199.

The filing fees for a trademark application are as follows:

- (1) \$275 per class for a TEAS Plus application that meets the requirements of 37 C.F.R. §§2.22 and 2.23;
- (2) \$325 per class for an application filed electronically using the Trademark Electronic Application System (TEAS); or
- (3) \$375 per class for an application filed on paper.

These fees will be charged not only when a new application is filed, but also when payments are made to add classes to an existing application.

If an application is filed based on a bona fide intent to use the mark in commerce, additional forms and filing will be required at a later time.

The USPTO recommends filing an application through TEAS, at <http://www.uspto.gov/teas/index.html>, and pay the fee using a credit card, existing USPTO deposit account, or electronic funds transfer (EFT). If filing on paper, checks or money orders should be made payable to the Director of the United States Patent and Trademark Office and mailed to:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Fees are subject to change and should therefore be verified before submission to the USPTO. You may obtain the current schedule of fees at <http://www.uspto.gov/go/fees/index.html>.

To receive a hard copy of the schedule of fees you may contact the USPTO Contact Center (UCC) at 1-800-786-9199.

TEAS: The difference between the TEAS Plus application and the TEAS application is a matter of completeness. The TEAS Plus application is more specific and requires the applicant to commit to updating his/her information regularly and filing responses to USPTO inquiries electronically. Should a TEAS Plus applicant renege on this commitment, the USPTO charges an extra \$50, essentially turning the application into the regular TEAS type. For example, fresh tomatoes are class 031, according to the goods and services manual. Applicants must file an image of the desired logo in .jpg format. There are additional requirements for foreign entities trying to register a mark in the U.S.

A TEAS Plus application must include the following under 37 C.F.R. §2.22.

- (1) The applicant's name and address;
- (2) The applicant's legal entity;
- (3) The citizenship of an individual applicant,
- (4) If the applicant is a partnership, the names and citizenship of the applicant's general partners;
- (5) A name and address for correspondence;

- (6) An e-mail address for correspondence, and an authorization for the Office to send correspondence concerning the application to the applicant or applicant's attorney by e-mail;
- (7) One or more bases for filing
- (8) Correctly classified goods and/or services, with an identification of goods and/or services from the Office's Acceptable Identification of Goods and Services Manual, available through the TEAS Plus form and at www.uspto.gov.
- (9) If the application contains goods and/or services in more than one class, compliance with §2.86;
- (10) A filing fee for each class of goods and/or services, as required by §2.6(a)(1)(iii);
- (11) A verified statement that meets the requirements of §2.33, dated and signed by a person properly authorized to sign on behalf of the applicant pursuant to §2.33(a);
- (12) A clear drawing of the mark. If the applicant does not claim standard characters, the applicant must attach a digitized image of the mark in .jpg format. If the mark includes color, the drawing must show the mark in color;
- (13) If the mark is in standard characters, a mark comprised of only characters in the Office's standard character set, currently available at www.uspto.gov , typed in the appropriate field of the TEAS Plus form;
- (14) If the mark includes color, a statement naming the color(s) and describing where the color(s) appears on the mark, and a claim that the color(s) is a feature of the mark;
- (15) If the mark is not in standard characters, a description of the mark;
- (16) If the mark includes non-English wording, an English translation of that wording;
- (17) If the mark includes non-Latin characters, a transliteration of those characters;
- (18) If the mark includes an individual's name or portrait, either (i) a statement that identifies the living individual whose name or likeness the mark comprises and written consent of the individual, or (ii) a statement that the name or portrait does not identify a living individual (see section 2(c) of the Act);
- (19) If the applicant owns one or more registrations for the same mark, a claim of ownership of the registration(s) identified by the registration number(s), pursuant to §2.36; and
- (20) If the application is a concurrent use application, compliance with §2.42.

Conclusion:

Trademarks can be a useful tool for farmers or groups that believe their products offer something unique. They help define a product standard for the consumer as well. It is important to note that trademarks can not be created simply based on ideas or names that *might* be useful or profitable. The rights to several undefined ideas can not be trademarked. The mark must be used either for the product itself or demonstrating specific intent for the mark in the future. The verified statement must either be submitted with the application, or verify intent, both now, and on the day of filing the application, to use the trademark on the goods. (37 C.F.R. §2.34) These things, actual use of the mark or intent to use the mark, are the bases for filing.

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