



Protecting Your Name

It took our band forever to find a name we all like. Now that we've been using it for a year – (we've been playing and selling merchandise) what's the best way to keep another band from taking it?

I'm going to skim over many of the finer points of trademark law to provide you with a general look at trademark protection for your band. A trademark was automatically created through your continuous use of the name to represent your band and its merchandise, but this trademark protection is limited to the geographic area where people connect your name with your band (and maybe a little bit more).

However, say a band in Nevada innocently starts using the same or a similar name for their band tomorrow. Then a few months from now you decide to file a federal trademark. At that point, you may not be able to obtain the use of your band name where the other band performs in Nevada because they have already established trademark protection in that area.

A federal trademark registration, when granted, provides nationwide name protection from the date that you applied. Before filing your application, a search report on all use of your band's name throughout the United States should be ordered from an attorney. The report isn't 100% accurate but it will give you an indication of whether your name is worthy of filing a federal trademark application.

If your name looks good, you must then use it in federal commerce (perform and sell your merchandise in at least two states) to qualify for federal protection. After that, you could file the application forms yourself, but there are some tricky bits so it usually saves time to hire an attorney. Most successful bands file federal registrations as both a service mark and a trademark.

A service mark is filed for the band's name in connection with live musical performances ("entertainment services"). This includes using the band's name, photo, and logo with pertinent information for bookings, or for advertisements for upcoming shows.

A trademark is filed for the use of the band's name, photo, or logo for merchandise. A trademark is also filed for musical sound recordings in the form of CDs, DVDs, etc. The USPTO does not provide trademark protection for a band's name on a recording until it functions as a trademark. Some steps toward this are when the band name has been used on two or more recordings and the public has come to recognize the band as providing a quality product.

LAW OFFICE OF
VALERIE LOVELY

After you file your paperwork and send in your fee, it can take months before you hear back. If there were problems you will be given six months to respond. When your application is approved, it is published on the "Official Gazette of the United States Patent and Trademark Office." Thirty days are allocated for anyone to file an opposition to your name. If unopposed, you will have your registration in about three or four months. It can take a year or two after filing before you obtain your registration, however, your protection goes back to the date that you filed your application.

With your band name registered as a federal trademark, any bands who apply after you with the same or a similar name will be denied. Your federal trademark registration is considered as a notice to all other bands that you are already using the name (and they should find another one). If a band anywhere in the U.S. uses your band name, you may be able to obtain an injunction to stop them as well as other remedies through the courts.

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