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What a Trademark Clearance Search Actually Checks

ANTHONY CLEMENZA · MANAGING PARTNER

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IN BRIEF

- A knockout search is a quick screen of the USPTO's federal register, with informal web and business-name checking, meant to catch obvious conflicts before money goes into an application.
- A comprehensive search adds sources the federal register does not contain: state trademark and business registries, domain names, and unregistered use by businesses that never filed anything but may still have rights in the name.
- Neither search predicts the result. Both are risk assessments, and the USPTO's examining attorney reaches an independent conclusion on whether your mark is too close to someone else's.

The name is chosen. The domain is bought, a designer has sent three versions of the logo, and someone has asked the printer for a quote on the bags. Before any of that goes further, one question deserves an honest answer: if you spend the next three years building this name, who already has a claim to it?

That is the question a clearance search answers. It is worth knowing what each kind of search actually looks at, because the quick one and the thorough one answer different questions, and the difference tends to show up later, when it is expensive.

Two kinds of search, and what each is for

A **knockout search** is a screen. It checks the federal trademark register kept by the U.S. Patent and Trademark Office (the USPTO) for obvious conflicts, with informal checking of the web and business-name listings alongside. It is quick, and it is the right tool for thinning a shortlist: should you keep thinking about this name at all?

A **comprehensive search** is an investigation. At this firm it starts with a commercial search report, ordered from an outside research provider, covering federal, state, common-law, business-name, domain and online sources. (Common-law rights are rights that come from using a name in business, with no registration anywhere.) The report gathers information; it does not reach a conclusion. The attorney reads it, looks into the references that matter, and writes a risk opinion on the mark as searched, with a recommendation on how to file if you go ahead.

The USPTO's own description of a comprehensive clearance search reaches further than most people expect: its federal database of registered and pending marks, its weekly Official Gazette, state trademark and business registries, domain name registries, international trademark databases (including those run by the World Intellectual Property Organization and the European Union's trademark office), and the open internet.

No rule requires you to search before you file. The USPTO strongly recommends it anyway, and the reason is plain: a name is far cheaper to change on a shortlist than on a shelf. The firm's two clearance options, and their fees, are published on its trademark page.

What the federal register shows you

Searched properly, the register shows marks that look, sound or mean something similar to yours, the goods and services each one claims, and whether each filing is still alive. It also shows pending applications, and those matter more than people think. When your application is examined, the examining attorney (the USPTO lawyer assigned to review it) searches pending applications as well as registrations, and an earlier-filed application for a similar mark can put yours on hold until that one either registers or is abandoned.

It also shows you owners. A single registration is a fact. Six registrations, a string of variations and a history of opposing other people's filings is a posture, and it tells you how that owner is likely to react to you.

What the register cannot show you

Federal registration is not where trademark rights begin. In the USPTO's own words, common-law rights are based solely on someone using their trademark in commerce within the United States with specific goods or services. A business that has sold under a name for years, in real markets, may have rights in it without ever filing anything.

Those rights count at the USPTO too. The federal trademark statute bars registration of a mark likely to be confused with a mark or trade name "previously used in the United States by another and not abandoned." The examining attorney generally does not refuse an application on that ground, because the office's search is of its own records. The earlier user is the one who raises it: by opposing your application in the thirty days after it is published for opposition (a window that can be extended on request), or by writing to you after your packaging is printed.

This is the gap the comprehensive search exists to close. It is also why the USPTO tells applicants to search the internet for other people's use rather than stopping at its database.

A search run against the wrong goods is worse than no search, because it returns a clean result you will believe.

How the USPTO decides whether two names are too close

Likelihood of confusion (the risk that buyers would assume two products come from the same source) is, by the USPTO's own account, the most common reason it refuses registration. Examining attorneys work from a list of factors set out in a 1973 court decision, and the USPTO's examination manual names two as the key considerations in every case: how similar the marks are, and how related the goods or services are.

In plain terms, two questions:

- **Do the marks feel like the same thing?** Not "are they spelled the same." Marks can be confusingly similar in sound, appearance, meaning or overall impression. The USPTO's own example pairs T. MARKEY with TEE MARQUEE: different letters, one sound.
- **Would a buyer expect them to come from the same place?** Goods and services can be related if they compete, are used together, are bought by the same people, are advertised together, or are sold by the same kind of business. The USPTO's examples of related goods include T-shirts and hats, and banking and mortgage lending. Its examples of identical marks living side by side, because the goods are unrelated, are Dove soap and Dove ice cream bars, and Delta faucets and Delta air travel.

Other factors (how carefully buyers shop, how many similar marks are already in use, whether the two owners have signed a consent agreement) come in only when there is evidence of them in the record.

Why the goods and services matter as much as the name

A search is never of a name alone. It is of a name against a set of goods and services, and the edge of that set is the edge of the answer. The USPTO sorts goods and services into 45 numbered categories, called classes, and the same word can sit safely in two of them.

That cuts both ways. A search run against the wrong goods is worse than no search, because it returns a clean result you will believe.

So before anything is searched, three questions get settled. What do you actually sell? What are you likely to sell in the next few years? And what would a customer reasonably assume you also offer? The USPTO suggests that last test itself: if you sell hot dog buns, a customer may expect you to sell hamburger buns too. The second and third questions are the ones owners rarely ask themselves, and they are why a good search starts with a conversation rather than a database.

An illustration

This is a composite, not a client. A founder wants a one-word name for a coffee subscription. The knockout search comes back clean: nothing identical or close on the federal register for coffee.

The comprehensive report finds three things the knockout could not. A registration on one state's trademark register for a similar name, used on roasted coffee. An unregistered roaster in another state that has sold online under a close variation for years, with press coverage to show for it. And the matching web address, parked, held by that same roaster.

None of it is a federal registration. None of it would have turned up in a register-only search. All of it is a reason to think hard before printing bags, and the written opinion's job is to say how hard, and what to do about it: go ahead, narrow the goods, or choose again.

What a search cannot do

A clearance search is a risk assessment. It is not a prediction, and it is not a shield. The examining attorney runs a search whether or not you did, and may cite a registration you considered and set aside. Someone may oppose on rights no search could have found. Registration is never guaranteed: the USPTO decides, not your lawyer and not your search report.

Federal registration is not where trademark rights begin.

What a search does buy is a decision made with the facts in front of you, at the stage where changing your mind costs a conversation instead of a rebrand.

Where to start

This week, before anyone searches anything, write three short lists on one page: what you sell today, what you expect to sell in the next few years, and what a customer might assume you also offer. Then type the name, and its closest spellings and sound-alikes, into the USPTO's free trademark search system and a couple of ordinary search engines. If something close turns up, you have saved yourself money. If nothing does, you have the page a proper clearance search should start from.

This is general information about how trademark clearance searching works, not legal advice about your mark.

WRITTEN BY

Anthony Clemenza

MANAGING PARTNER

Anthony is the Managing Partner of Clemenza Law Group and serves as general counsel to a wide range of companies and philanthropic organizations. Nearly every essay here began as a real question from a real client: the contract that landed at 4 p.m., the board that meets on Thursday. He writes them the way he would answer you across the table, plainly and with care.