



# BRANDING STRATEGY: KEY QUESTIONS YOUR STARTUP SHOULD CONSIDER

By Mark Jansen

When building your brand, your company should consider the following questions:

**1. What products/services are you going to use with the brand?**

Consider the kinds of products or services you intend to offer with your trademark over the next two or three years, since it will take some time to complete the trademark registration process in certain countries. Remember, you don't need to commercially use a brand to file, as long as you intend to use it in the future. Generally speaking, your rights are only as broad as the description of products and services claimed in your application.

**2. Where do you expect to sell this product/service (i.e., worldwide, US, EU)?**

Keep in mind that a majority of countries have first-to-file trademark priority systems, meaning that trademark rights arise from registration, not use. File early and often, and if budget permits, consider filing in jurisdictions where you plan to do business.

**3. Does your proposed trademark describe a feature or function of your product/service? Or is it an industry term?**

If the answer is "yes," to either of these questions, the brand you've chosen may be hard to register or protect. Creativity is key – choose strong, unique and distinctive brands, or consider coining a new term.



#### 4. Is anyone else using your proposed trademark for something similar?

Do your homework to make sure others are not using similar trademarks for related products or services. Consider contacting a trademark lawyer to help you clear your brands and come prepared with a few backup options. At minimum, do your own preliminary web research and use the Trademark Office's online search tools. This is especially important if it will be hard to rebrand later on.

#### 5. Have you looked at the availability of domains and social media for your brand?

Register relevant domains and sign up for social media profiles incorporating your trademark to stake your claim in the brand.

#### 6. How do I use trademark symbols?

There is some flexibility on how and where to use the TM and ® symbols (though the ® symbol should only be used once you've registered the mark). Use the symbol (where and when appropriate) on at least the trademark's first or most prominent appearance on a page. Placing the symbols at the upper right-hand corner, the lower right-hand corner, or level with the marks themselves are all typically acceptable ways of displaying the symbols.

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To learn more, please contact [Mark Jansen](#) and the Fenwick & West [trademark team](#).



Mark Jansen is a senior associate in Fenwick & West's trademark group. His practice focuses on domestic and international trademark and trade name counseling, and strategies for developing and managing domain name portfolios. He advises clients from startups to multinational corporations on brand strategy and the protection of brand assets, including brand creation, selection, protection, expansion and enforcement. Mark has extensive experience working with cutting-edge companies that are disrupting industries and improving lives through technological innovation, including those in the artificial intelligence (AI), virtual, augmented, and mixed reality, computer vision, blockchain, autonomous vehicle, robotic and e-commerce industries.