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# ASK THE EXPERT



## LEGAL

What branding and trademark strategies should I consider when launching a startup or small business?

Small businesses and startups should carefully consider brand and trademark strategy. Creating a commercial impression that differentiates a business from its competitors through trademarks and related branding can be as important as the quality of goods and services. Failing to do so misses an opportunity to stand out and have customers associate your trademarks with your quality and service. Missteps in branding can be as bad as not having a strategy at all.

Brand strategy should:

- Distinguish your business in a crowded marketplace.
- Create a strong consumer connection between your business and its goods or services.
- Create buzz about a new business in a marketplace.
- Add value to your business.

Your strategy should start with the following.

### Conduct research early.

Hiring professionals is not an unnecessary expense because doing so can save substantial costs. Initial research identifies problems with potential trademarks, including identifying businesses with superior trademark rights. Early discovery avoids potential lawsuits and rebranding.

### Choose a distinctive and fanciful trademark.

Arbitrary (random) and fanciful (imaginative) trademarks have no association with goods or services before being used in the marketplace. Over time, consumers associate them with businesses. Some examples are "Exxon®" and "Kodak®."

Suggestive trademarks require a consumer to use some imagination in order to connect the trademark to a business. However, the more suggestive a mark, the weaker it becomes. Merely descriptive trademarks (requiring no imagination) are generally unenforceable. And while your name may be important to consumers, names are also generally unenforceable. It takes years of marketing to make an unenforceable trademark enforceable, if ever.

### Choose a trademark that is not similar to others.

There can be an instinct to utilize trademarks similar to others in the marketplace. Marketplaces are filled with trademarks suggestive of the goods and services in that marketplace. For example, using a computer term in a trademark for computer services is common—and weakens similar trademarks.

Copying others misses an opportunity to stand out. Using a trademark similar to others is likely to make yours weak, difficult to register and more difficult to protect. And a mark similar to someone else's is likely to lead to an infringement claim.

Early planning can save money later and increase revenue. Research and choose trademarks carefully. Use branding to let customers distinguish you in the marketplace, which is what matters most. Plan smartly and set your business apart.



### About the Expert

Duncan Byers is a shareholder in the law firm of Pender & Coward focusing his practice on patent, trademark and intellectual property matters and civil litigation. He plans, procures and protects the creative and intellectual property of businesses and individuals. Contact Duncan at [dgb@pender.law](mailto:dgb@pender.law).