

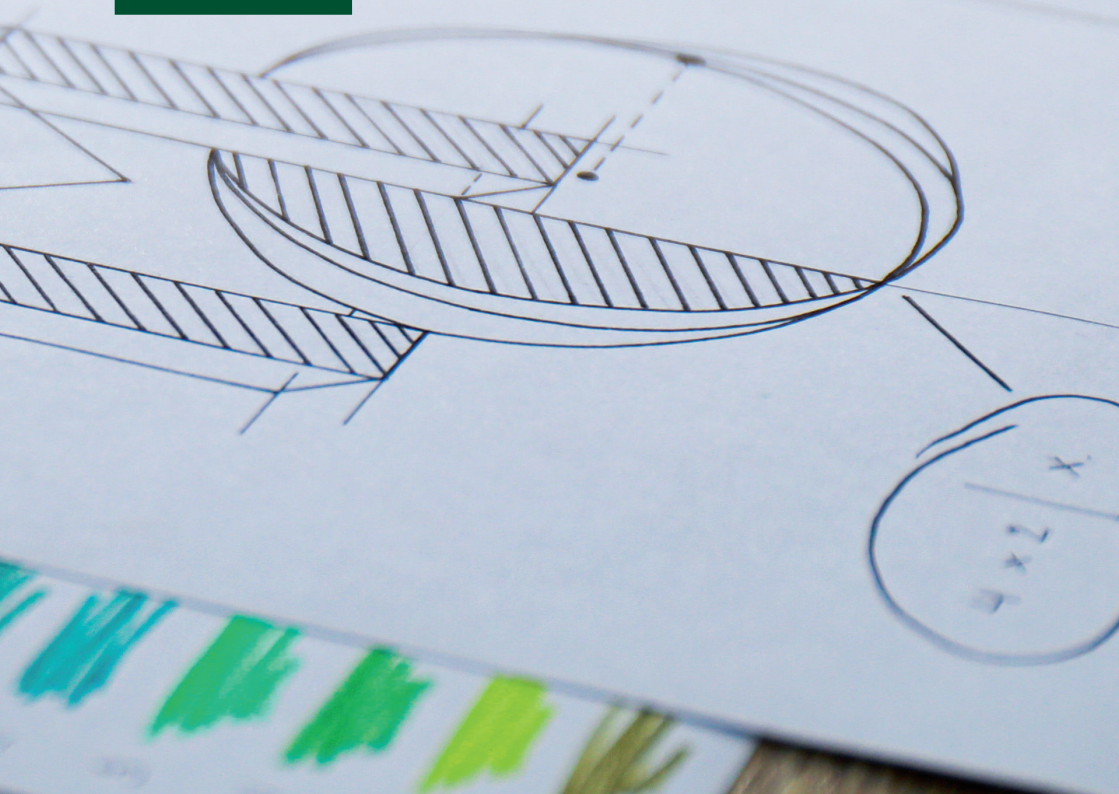


PLUGMANN VINGTOFT®

# Trademarks

## A MINIGUIDE FOR ENTREPRENEURS

A company's name, slogan, logo, and/or the name of the company's products are examples of distinctive signs, which can be protected with a trademark registration. With a trademark registration, you can protect the distinctive sign, which is recognisable to consumers and potential customers, and at the same time it shows everyone that you take your company seriously.



# What can I register as a trademark?

**Word marks:** Letters, which form one or more words or an abbreviation, which can be pronounced. HUMMEL®, CARLSBERG®, and PFA® are examples of word marks.

**Figure marks:** Logos – with and without words – as the famous apple for APPLE® and the four rings in the logo for AUDI®.



**Shape marks:** Trademarks, where the shape of the products or the packages constitutes the distinctive sign. A good example is the Mae West bottle from COCA-COLA® and the distinctive mountaintops from TOBLERONE®.

**Position marks:** Trademarks, where the specific way in which the trademark is placed on or affixed to the product constitutes the distinctive sign. An example of position marks are the distinctive repeated v-stripes, used by HUMMEL® on their clothes.

**Sound marks:** These can, for example, be a jingle such as the well-known bells from HJEM-IS® or the sound which you hear when you pay with the app from MOBILEPAY®.

**Colour marks:** A trademark can also be a specific colour or a combination of colours, GRUNDFOS® has registered the red colour on their pumps and A.P. Møller – Mærsk® has registered the blue colour for sea freight transportation. NB: It is usually very difficult to obtain an exclusive right for a colour.

Other examples are pattern marks, motion marks, multimedia marks, hologram marks, and the category "other marks".

# The three requirements to qualify as a trademark

Regardless of the type of the distinctive sign, there are three overall requirements, which you must meet, before the authorities will accept and grant you an exclusive right to a trademark:

**1. The trademark must not only be descriptive.** You must ensure that the trademark is not descriptive or resemble a commonly used symbol. You can, for example, not obtain an exclusive right to the word "APPLE" for apples, the red Ø for organic products or a picture of a cow for milk.

**2. The trademark must not be misleading or be inconsistent with legislation or public order or public morals.** This means, that you cannot obtain an exclusive right to the word "PEARS", if you are selling apples. Words such as BANK and PHARMACY can only be used in your trademark, if your company has been granted authorisation to act as a bank or pharmacy by the relevant authorities.

**3. The trademark must not contain official symbols.** This means that, for instance, you cannot use the Danish coat of arms or symbols of

international organisations, such as the symbol of the EU flag with the circle of stars on a blue background, unless you have been granted permission to use the symbols.

## Trademarks of other companies and other rights

It is also important to know that as a starting point you cannot register your trademark, if someone else already has the rights to, for instance, an identical trademark or a trademark, which resembles your trademark and conveys the same overall impression, with respect to the same or similar products and/or services as yours.

In Denmark and the EU, it is up to the owners of existing rights to file an opposition, if they believe that their rights are infringed. However, in many other countries a search for existing trademarks is part of the fundamental "trademark requirements" which the authorities can use in order to refuse a trademark application as is the case with the abovementioned three requirements to qualify as a trademark.



## Trademarks and domain names

If you register a domain name, you will not automatically obtain an exclusive right to this name. When you register a domain name, the only thing that will be checked is whether the name has already been used under the top level domain or country domain, where you want to register your domain name.

There is a big connection between domain names and trademarks because very often the company's domain name is also the company's distinctive sign.

Therefore, it is a good idea to consider a trademark registration, when your company registers domain names. The only way to obtain a true exclusive right to a name is by registering the name as a trademark.

## What will I achieve if I register my trademark?

### **You will have a stronger position towards counterfeiters**

A registered trademark provides a guarantee for your right which you can invoke, if others subsequently come up with an identical or similar name with respect to the same or similar products or services.

Thereby you have a stronger position in a conflict where someone has profited from or copied your brand.

### **You make your distinctive sign publicly known**

When your trademark has been officially registered, you can easily prove that the trademark belongs to you, and you have made your right publicly known. If anyone else wants to use an identical or similar name with respect to the same or similar products or services, it is also easy for them to see that you have an exclusive right to the trademark.



### **You strengthen your business and your growth potential**

A strong, recognisable trademark is one of the most effective ways to stand out and to create awareness of your brand among your customers, and if you manage to create such a good position for your trademark, it is clearly an advantage if you have obtained an exclusive right thereto.

A trademark registration is proof that you have created something unique.

It strengthens your commercial position and provides a much better basis for making agreements, for instance, about licensing or a possible sale of the trademark right.

Furthermore, if you want to attract investors to your business, they highly value a trademark registration. They will not have to worry whether you are actually entitled to use your trademark in the way you do (and neither will you).

# How do I register a trademark?

## Step 1: Search your options

First, you must find out if your idea for a trademark is available. Make a search in the Central Business Register, on Google, and in the databases of the Patent and Trademark Office to find out if what you intend to register as a trademark is already taken. Besides, it is a good idea to check, whether the name is available as a web domain. A thorough research gives you an indication about whether your idea for a trademark can be protected and how close you are to potential competitors.

## Step 2: Make a strategy

Who shall own the trademark rights? In which countries shall the trademark be registered? Shall you register more than one trademark, and in that case how shall you prioritise the order?

## Step 3: Write and submit your trademark application

Your trademark application must list the trademark, the name, and address (of you or your company) as well as which products and/or services your distinctive feature must protect. The last-mentioned is called a list of goods.

# What does it cost, how long will it take, and how long is the duration?

The costs of a trademark registration depend on the number of countries you wish the trademark to be protected in, and how broad a protection you want to achieve.

In Denmark and the EU, you can expect that it takes 8-12 weeks to examine a trademark application.



Then follows an opposition period of two months in Denmark and three months in the EU, where owners of existing rights, such as for instance existing trademarks, can file an opposition, if they believe that their right is infringed. If there are no oppositions, the trademark will most likely be registered within six months from the actual filing of the trademark application. If the application is accepted, and you obtain a trademark registration, your trademark protection is valid from the application date.

A registered trademark protection is valid for 10 years from the application date. If you wish to continue the protection of your trademark, your trademark registration must be renewed after 10 years. In principle, a trademark registration can last forever, if it is renewed every tenth year.

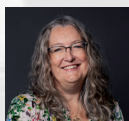
You must be aware that the owner of a trademark must make use of it five years after the trademark was registered. This means that others can register an identical or similar trademark or apply for a revocation of your trademark registration, if you have not made use of it within five years.



# Do you have more questions or do you need help?

If you have reached this part, it may be because you think that a trademark protection is the right solution for you and your company.

In that case, you are welcome to contact Plougmann Vingtoft's trademark experts and ask additional questions or find out how they can help you. Any preliminary contact is of course free of charge and non-binding. Our trademark experts can assist you with preliminary searches and evaluations, strategic counselling, the application, and the registration as well as an assessment of, whether you might also benefit from further protection in the form of designs or patents.



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