

Making Your Mark on the World

By David Denney

When planning a new venture, many operators are so certain of the uniqueness of the name of their bar or restaurant that they fail to determine whether anyone else has already had the same stroke of creative genius. Many expensive signs have been torn down after owners learn, too late, that the name they opened under is already in use somewhere else.

A “trademark” is the unique name or indication that identifies and distinguishes a particular good or service from the goods or services of another. Trademarks that are registered with the United States Patent & Trademark Office (USPTO) bear the ® symbol. The principal difference between unregistered (“common law”) marks and registered trademarks is that registered marks are afforded specific protections under federal law. Trademarks are intellectual property assets that can be valued or sold, and registration provides definite proof of the validity of that asset. The process of registering a trademark is, in most cases, a relatively inexpensive process.

Even a seasoned operator who remembers to seek trademark protection for the name of the establishment can, however, fail to seek protection for other intellectual property assets, such as specialty drinks or menu items. For example, after a competing restaurant promoted a drink bearing the same name as its years-old Rumbarita, Mattito’s Tex-Mex in Dallas, Texas, registered the name of the drink to establish its rights in the mark. Similarly, Brinker Restaurant Corp. holds multiple trademarks relating to its “Presidente Margarita.” Artwork, logos, and the very name of the item itself can be trademarked, offering protection from infringement by competitors.

Whether you have one location or multiple units scattered across many states, if your establishment has a proprietary drink, logo or slogan, the protection afforded through registration can only enhance the value of your intellectual property.

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