

# **Virginia**

## **Regulatory Hot Tip 2015 – 3**

*Professional Insurance Agents Association of Virginia and DC, Inc.*

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### Intellectual Property

These two words were hardly in my vocabulary when I went to law school, but today we all have a basic understanding of what this subject is all about. Black's Law Dictionary 669 (Abridged 8<sup>th</sup> ed. 2005) offers the following definition for your consideration, "[a] category of intangible rights protecting commercially valuable products of the human intellect. The category comprises primarily trade-mark, copyright, and patent rights, but also includes trade-secret rights, publicity rights, moral rights, and rights against unfair competition."

For example, that lovely logo that you got someone to design for your agency, the custom letterhead that you have been using since you got into business or your trade name (or nickname) that you have been using along with the colorful banner that surrounds your special nickname. Also included are your trade secrets such as possibly your client list, your sales ideas, etc. Intellectual property certainly is broader than just these examples but you get the idea. For purposes of this article we are going to focus on two subsets of intellectual property, specifically, Trademarks and Service Marks. Basically you acquire legal rights in marks through usage but your rights may be subject to the rights of others gained through common law.

Today, as the costs of design and technology have increased, folks have learned that their business intellectual property is something to be safeguarded to protect it from others who might wish to "borrow" it as their own. Business intellectual property can certainly become an asset to your agency business.

You can safeguard such intellectual property in a couple of ways. First, Virginia permits you to file a Trademark or Service Mark with the State of Virginia. Typically, a mark that identifies a good is referred to as a Trademark and a mark that identifies a service is called, you guessed it, a Service Mark. Additionally, there are different predetermined classifications from which you have to select when you complete your state or federal application classifying your good or service.

Moreover, for both state and federal applications, you will need a detailed description of your mark, complete with fonts and color descriptors if appropriate.

You can access the Virginia forms through the State Corporation Commission's Securities Division website.

[http://www.scc.virginia.gov/srf/bus/tmsm\\_regis.aspx](http://www.scc.virginia.gov/srf/bus/tmsm_regis.aspx). There is a fee for the state filing, but it is far less than that for a comparable federal application. Currently the state fee per mark runs about \$30.00. You will find that the state process is relatively inexpensive when compared with the federal process and the forms are pretty self-explanatory. Oftentimes, by using this state process, you have the ability to establish evidence of first use which is the bell weather of ownership in this marketplace.

However, if you operate beyond the borders of Virginia, you should consider filing for a federal Trademark or Service Mark for your good or service. Such marks are registered through the United States Patent and Trademark Office (USPTO). Again, federal forms are accessed through the federal website using the Trademark Electronic Application System (TEAS) at <http://www.uspto.gov/teas>. Such filings can run over nine times the price of the state filing depending upon the type of application that you plan to make. However, sometimes your business model requires that you make a federal filing.

Keep in mind that the state filing regulator may take only a couple of weeks to determine whether your application is acceptable or not, when the federal regulator could take over a year to review and determine whether your federal filing satisfies its requirements.

As this area of the law has gotten more sophisticated over time, particularly as litigants have argued over who is the true owner of these goods and services. You may determine that you should seek the assistance of counsel to make business intellectual property filings for your agency. A word of caution is that you really do need to do the leg work for your filing in order to reduce your legal expenses; plus, you know more about your intellectual property than anyone else knows.