

A trademark is protection: Use it
Thursday, November 5, 2009
The Record

Q. I have owned a flower shop for 10 years on Main Street with the business name "Phragrant Phlowers." A new florist just opened up in town and is using the same name as my business. Do I have any legal recourse?

Yes, you do.

The name you are using is legally considered a trademark. A trademark is a word, phrase, symbol, or design, or a combination thereof, that identifies and distinguishes the source of the goods or services of one party from those of others.

That is exactly what your name does – it distinguishes your flower shop services from those of other florists.

Registering your trademark may help deter others from using your trademark and provide you with an advantage in court when seeking to enforce your trademark rights. However, you may still have rights in the trademark of your name, whether or not it is a registered trademark. You have a common-law right, based on your mere use of the mark, to prevent other people from using the same or a similar trademark in the same marketplace where their use is likely to cause confusion about the source of the services sold under that trademark.

To enforce your legal rights in your trademark, you could start by sending a letter to the new florist pointing out that it is impermissibly using your mark and demanding it cease and desist from any further use.

You could also seek immediate court intervention to compel the infringer to stop. The strategic and legal considerations in determining how to proceed should be reviewed with your attorney.

Nicole Gerritsen is an associate in the litigation department of Cole Schotz Meisel Forman & Leonard PA, the largest law firm in Bergen County. She can be reached at (201) 525-6208 or ngerritsen@coleschotz.com. This information is not intended as legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of a client.

Do you have a business question for a lawyer? Then e-mail businessnews@northjersey.com.

Find this article at:

http://www.northjersey.com/news/business/ask_experts/69262472.html

Copyright © North Jersey Media Group