

# What's in a Name?

By: Ron Wargo

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## Trademarks and the 2016 Election

At every political rally, there are a host of vendors selling myriad t-shirts, buttons, and bumper stickers festooned with slogans and candidate names. This year, one of the two principal presidential candidates has monetized the business of politics. The other candidate has not.

In late 2015, Donald J. Trump registered the word mark TRUMP for “political action committee services, namely promoting public awareness of political issues,” and “fundraising in the field of politics” with the United States Patent and Trademark Office. He subsequently assigned the trademark to DTTM Operations LLC, the personal LLC that owns the Trump branding for all of his other business ventures, such as Trump Tower and Trump brand cologne. Mr. Trump’s LLC has also applied to register the trademark for, among other things, bumper stickers, t-shirts, campaign buttons, providing online information regarding political issues, political campaign services, and many other political items.

Few candidates have registered their names as trademarks for political services. For example, Hillary Clinton has not done so, and neither did Mitt Romney, Barack Obama, John Kerry, Al Gore, Bill Clinton, or George H.W. Bush. Committees for John McCain and George W. Bush did own trademarks for their candidates, but licensing revenues went to their campaigns, not to the candidates themselves. Any trademark license revenues for TRUMP will be paid to Mr. Trump’s private LLC.

Mr. Trump’s trademark registrations raise interesting issues in the field of trademark law.

### **Must everyone pay Mr. Trump a licensing fee to sell any materials supporting or opposing him if they use his last name?**

Yes. Anyone who wants to sell something using the name TRUMP or a derivation of it should obtain a license from Mr. Trump’s LLC. That includes those selling t-shirts, bumper stickers, buttons, or anything else with the candidate’s trademarked name. If Mr. Trump is litigious, failure to obtain a license could result in expensive legal proceedings with attorneys’ fees and possible additional damages awarded to Mr. Trump. Those against Mr. Trump also technically need a license from him to print and sell anti-Trump materials bearing the name of the candidate. In other words, Mr. Trump could sue anyone selling a #NeverTrump or “Love Trumps Hate” T-Shirt. Hopefully no PAC is using TRUMP without a license. That could prove to be very expensive—if Mr. Trump is litigious.

### **Must Mr. Trump defend his trademarks?**

Yes. If Mr. Trump allows supporters or opponents to manufacture products bearing the TRUMP name without a license, he arguably weakens his brand under trademark law and possibly dilutes his brand. Mr. Trump’s LLC owns over 100 trademarks bearing the TRUMP name registered with the United States Patent and Trademark Office. If Mr. Trump fails to police his trademarks by stopping infringing users, he risks the possibility that his trademark could be considered generic. If a trademark is generic, it would be available for anyone to use without a license, free of charge. Long ago, Bayer lost its registered trademark for “aspirin” after failing to police its trademark.

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## **Do I have to get a license from Mr. Trump to write this blog entry?**

No. The First Amendment protects anyone writing articles about Mr. Trump, including me. The problem arises when a good or service is sold bearing the Trump name, so if you use it to sell anything, contact DTTM Operations LLC, 725 Fifth Avenue, New York, NY 10022, for a license.

“What's in a name?” asked Shakespeare. At least for one candidate in this presidential election, money.