

Best Practices for Creating Impressive Trademarks with Generative AI

By: Sean D. Detweiler
September 08, 2023



In the world of trademark law, the ability to come up with new trademarks for products or companies has become increasingly challenging. Trademarks that have the best chance of being useable and registerable without running into a lot of issues, in terms of being too similar to other marks, are trademarks that are fanciful or made-up words. Sometimes, these marks are created by a mashup of other known words and sometimes they are entirely made up.

My advice to start-up companies, business people, or other clients who are trying to find new trademarks for their products has always been to get creative by identifying a new trademark that does not use existing words or phrases. However, this is often more easily said than done because to do this successfully requires creativity at levels that a lot of people are not able to execute – until now.

In 2023, businesses are embracing innovative technology like generative artificial intelligence (AI) to help in various aspects of their operations. The use of generative AI is presently best used in creative ways vs. for research of actual facts (which is best done using other forms of AI).

Generative AI can generate new content, making it well-suited for creative processes such as creating new images, photographs, artwork, and stories. It can also be used for the creation of new trademark words and phrases. Generative AI tools enable a user to enter some general information, possibly provide descriptions of desires related to what message or vibe they want the trademark to include or convey, and define attributes such as the number of characters or words, which can dramatically shorten the brainstorming process. This results in a much quicker and more creative process, which generates a much improved result.

However, navigating the intersections of AI-generated content and trademark law calls for a balanced approach to sidestep potential legal challenges. Below are some best practices for effectively and legally harnessing generative AI software to craft new trademarks:

1. Steer Clear of Trademark Pitfalls when Using Generative AI

While generative AI software can craft remarkable content, there are potential risks, especially concerning trademark violations. Any content produced by the AI must be vetted to assess whether it has too much similarity to existing trademarks of others. If a new trademark is the same or similar to a previously existing trademark for the same or similar goods or services, issues may arise regarding a likelihood of confusion or actual confusion between the two trademarks. Such instances of actual or potential customer confusion can lead to legal entanglements and costly rebranding efforts down the line. To safeguard against this, be sure to investigate the trademark rights of others before launching your new brand.

2. Use the AI's Output as a Starting Point

An additional area of potential legal hazards relates to copyright considerations. Content

generated by AI, including that produced by generative AI software, might not always be safeguarded by copyright laws – this is an issue currently working its way through the courts in many countries around the world. One way to avoid issues related to copyright ownership is to treat the AI output as a creative starting point rather than a final product. By adding your unique touch and transforming the AI-generated content, you not only reduce the risk of potential copyright concerns, but also ensure that your trademark shines with distinctiveness.

3. Collaborate with a Trademark Pro

While generative AI software can be an excellent tool for feeding the creative process in identifying new trademark words or phrases, it is not (yet) a replacement for the expertise of a trademark attorney. The legal nuances and requirements involved in making a final selection of a new trademark are intricate. You want to ensure your application meets all legal criteria, giving it the best shot at being usable in the marketplace with a reduced risk of running into complications.

4. Conduct a Thorough Trademark Search

Before fully committing to a new trademark created with the aid of AI software, conducting a comprehensive trademark search can be extremely useful. This search helps ensure that your desired trademark is not already in use by another entity. While the AI software can assist in brainstorming, the responsibility of performing a diligent search fall on your shoulders. This step minimizes the risk of unintentionally infringing on existing trademarks. Enlisting the assistance of a skilled trademark attorney to conduct a thorough trademark clearance process is highly advisable. Their expertise can guide you through the intricacies of existing trademarks, helping you to avoid unintentional infringement or obstacles to registration.

5. Secure Trademark Registration

A goal of creating a new trademark is to secure legal protection for your brand identity. Registering your new trademark with relevant authorities, such as the United States Patent and Trademark Office (USPTO), provides essential legal rights and safeguards. This includes the exclusive right to use the trademark in business activities. This step is pivotal in establishing prima facie evidence of ownership and preventing unauthorized use by others. Again, be sure to work with an experienced trademark attorney to help navigate the application process. Although it may seem like a simple process, there are additional nuances in how the application is prepared. For example, incorrect indications of dates of first use and identification of goods and services can easily lead to fatal errors in the registration process. It is also worth noting it takes at least 10 or 11 months from when an application is filed to hear back from the trademark examiner. Receiving news, a year after you launch can be a substantial and expensive setback.

Using generative AI software to create new trademarks holds promise for businesses seeking innovative branding solutions. However, it is vital to approach this process with careful consideration of legal implications. Using generative-AI as a starting point – not an endpoint – for creative brainstorming of new marks, conducting comprehensive searches, engaging a trademark attorney, and registering your trademark, are key steps for a successful and legally sound trademark strategy. By harmonizing AI technology with legal expertise, you can forge a unique and protected brand identity in today's competitive market.

Without endorsing any particular generative AI platform or product, one example tool that is representative of the generative AI software discussed here is [ChatGPT](#). If you already have an account, then try it out (keeping in mind that anything you enter into the free version of that product is not confidential).

For additional information regarding trademarks or the registration process, please contact attorney [Sean Detweiler](#) at sdetweiler@morse.law.

