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Trademark Considerations in Agriculture

DISCLAIMER: This outline is a general guide. Be sure to contact an attorney if you have questions or specific issues that need to be addressed.

Trademarks may not immediately come to mind for agricultural goods and services, but agriculture has and continues to be impactful in the marketplace. The name, logo, or slogan that you use for your goods and services may be eligible for trademark protection, which could provide you with tools to build and strengthen your brand.

This guide provides a few key considerations and some background for trademark protection.

1. **What is a trademark?** A trademark is any word, name, symbol, device, like unique product packaging, or any combination thereof that is used in connection with a business to identify and distinguish goods and/or services. Examples of known registered trademarks in farming and agriculture include NEW HOLLAND for farm machinery, AMERICAN FARM BUREAU FEDERATION for promotional and business services in the field of agriculture, JOHN DEERE for various products including trailers, tractors, and wagons, and PRO-PELL-IT! PROPEL YOUR SOIL for pelletized limestone goods.

Often, trademarks are brand names under which others sell their goods or services. Goods and services in the agricultural space can include everything from branded meat and dairy products to crop management, farm machinery, and veterinary services. Annual event services like pumpkin patches, fall festivals, and holiday tours could also be services that are offered under protectable trademarks.

2. **Do I need a trademark registration?** It depends! If you sell crops, prepared foods, canned or jarred items, etc. you may want to make sure your products aren't confused with anyone else's products, especially if they could be of an inferior quality. It helps protect your brand and make it easier to enforce against anyone using your business name or logo without your permission. Registered trademarks cover all of the US and have other benefits as detailed under item 3.

Even without a trademark registration, you can still develop and enforce rights in a trademark which can be useful, though to a limited degree. Unregistered trademark rights (also known as "common law" rights) come from using a trademark in connection with the sale of goods or services. So long as you are using the mark for your business, you are building trademark rights that you may be able to enforce against others under certain circumstances. These rights, however, are often limited in geographic scope (i.e., where your business is) and without a registration, there is an additional burden of having to prove that you own your trademark rights.

3. **What is the value of trademark registration?** Trademark registration owners have particular benefits. These benefits include nationwide trademark protection, a public record that puts others on notice of your rights,

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the ability to use the ® symbol, and the ability to recover statutory damages (monetary compensation set by law) in the case of suing for infringement. Having a registration also strengthens your ability to enforce your rights.

4. **What do I need to apply for a trademark registration?** To apply for a trademark registration you must have a distinctive word mark or logo that you use in interstate commerce (generally understood as in connection with the sale of goods and/or services happening across state lines). You will also need evidence that you are actually using the mark in commerce (known as a “specimen”). The trademark registration process can be complicated due to the Trademark Office’s strict requirements. Working with an attorney affords you the benefit of additional guidance and support in navigating the trademark registration process.
5. **How long does a trademark registration last?** A trademark registration needs to be renewed between years 5 and 6, year 10, and then every 10 years after that to remain valid. As long as you are continuing to use the mark for your business and file the necessary maintenance documents with the United States Patent and Trademark Office, a trademark registration can last forever!
6. **How do I learn more?** Please contact us! We are happy to discuss trademark options for your brand and walk you through the possibilities. We assist trademark selection, clearance searches in the marketplace to determine whether the trademark will be approved for registration or if there are others using your brand/name/logo that might lead to confusion, preparing applications, securing registration and more.