

# Protecting Brands in the Age of AI

The rapid adoption of generative artificial intelligence (AI) presents both unique opportunities and challenges for trademark and brand owners. By harnessing AI's potential, businesses can accelerate the branding process by generating unique, brandable company and product names, logos and slogans tailored to specific industries and company values. However, with these advantages come several risks, including the potential for trademark infringement and dilution of established brands.

## The Power of Branding

Trademarks are powerful tools for businesses to distinguish the origin of their goods or services from others. Through effective branding, a company can carve out a unique space in customers' minds, establish trust and credibility, and help ensure that customers can readily identify and return to that company's particular offerings, even in a crowded market of similar products or services.

AI can be a powerful tool in the branding process, for instance by suggesting ideas for memorable company and product names, logos, slogans and marketing content that reflect a company's unique identity and industry. Drawing on historical data, AI can also help companies research customer preferences, identify market trends and predict potential marketing opportunities. This allows companies to adjust their branding strategies in real time. And thanks to AI, businesses can now handle a larger part of this process in-house, instead of relying on external marketing and consumer research agencies.

When selecting potential trademarks and brands, AI-powered search tools can also help flag potential conflicts between proposed names and existing brands more efficiently by sifting through vast databases of existing trademarks. Leveraging these advanced tools can help accelerate the clearance process and increase its accuracy and, as a result, reduce cost and risk to the business.

AI can also play a key role in brand enforcement. For instance, AI can assist with proactively monitoring for unauthorized uses of a brand or counterfeit products being sold online, identifying significant conflicts, and preparing cease and desist letters and requests to remove unauthorized uses. This approach helps brand owners stay a step ahead in safeguarding their intellectual property in a cost-effective manner.

## Challenges Posed by AI

However, the use of AI in the branding process also introduces several challenges. As AI shapes online consumer experiences and informs decision making, there is a heightened risk of rapid, large-scale trademark infringement and dilution of established brands, which could lead to widespread customer confusion and potential damage to a company's reputation.

One challenge stems from the ability of AI systems to generate names, logos, sounds and other types of content that may function as trademarks. Large Language Models (LLMs), trained on vast preexisting datasets, might inadvertently generate brand names, logos and other proprietary content that is confusingly similar to existing brands, leading to potential consumer confusion.

Moreover, there's a risk of spreading inaccurate or misleading information about a company's products and services. For instance, an LLM or generative AI tool might inadvertently create content that gives a misleading impression of a brand or changes how the brand is perceived, such

as a logo generator yielding designs similar to famous brands, or a chatbot providing inaccurate product information. Similarly, deepfake technologies, designed to mimic authentic content, could be deliberately used to impersonate established brands and mislead consumers into purchasing competing products.

These issues are particularly problematic for brand owners given the difficulty in distinguishing between legitimate and AI-generated content. Advanced AI tools can produce output that blurs the line between real and counterfeit uses, potentially leading to significant customer confusion, amplified by the machine speed and scale at which AI systems operate. What's more, consumers discovering that they have been misled may harbor negative feelings toward both the AI system and the misrepresented brands, which may chip away at the strength of those brands and potentially damage their reputation.

## **Practical Tips**

As AI advances, branding best practices can be adapted to meet the unique opportunities and challenges by considering the following:

- **Develop Unique Branding**: Before finalizing a name for a company or product (whether it's a name for an AI tool or a name proposed by an AI tool for other products/services), it is crucial to conduct a trademark search to ensure the chosen name does not infringe on existing trademarks and can be registered and enforced. AI-powered search tools can help streamline the process of selecting and clearing new trademarks by identifying potential conflicts early, saving time and resources. As the field becomes more global, the landscape of potential conflicts grows more complex, both in terms of registry and potential use-based issues. Investing in thorough trademark clearance can mitigate the risk of an expensive rebrand later, and AI tools can help expedite trademark searches and lower the cost of conducting them.
- **Trademark Registration**: Securing strong protection for trademarks, including names, logos and slogans, is key to safeguarding against generated marks and other types of marketing content that may function as trademarks. It's important to select distinctive marks, as they are generally easier to protect and enforce than descriptive terms. Businesses may consider pursuing a broad scope of goods/services coverage to ensure protection for new product applications. This includes both AI tools such as chatbots and voice assistants and products/services named using AI suggestions. It is also advisable to register their marks in the U.S. and internationally in key markets to help deter others from using similar names or marks for competing products or services.
- **Proactive Monitoring**: Brand owners must be vigilant in enforcing against emerging instances of infringement, including active monitoring for counterfeit products and unauthorized uses. AI technology can be a powerful ally in identifying potential infringements, preparing draft demand letters and takedown requests, and evaluating risks. Consistent and proactive enforcement efforts are critical to prevent the loss of trademark rights due to inadequate policing or dilution due to widespread and unchallenged use of similar marks.
- **Brand and Reputational Risks**: Brand owners and platforms using AI should be aware of the potential harm from AI-generated content that confuses or misinforms customers.
- **Establish Clear Agreements**: Platforms using AI should have clear terms of use and agreements in place to address the use of third-party trademarks and branded content, specify ownership of generated content and allocate risk. Platforms using AI should also consider providing a mechanism for brand owners to request removal of infringing content to help limit the possibility of AI-induced infringement.