



## Essential Advantages of a Trade Mark Registration

By David Bernstein

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Your company or close corporation registration will not automatically provide you with any rights to prevent copycats from using your trade mark and/or logo. The only way to protect your brand and/or logo is by registration under the Trade Marks Act.

1. The mere fact of registration, without the necessity of any proof of use of the trade mark, is sufficient to enable the owner of the trade mark to prevent the use or registration of another trade mark in respect of the same or similar goods or services, if the other trade mark so nearly resembles the registered trade mark as to be likely to cause confusion.
2. Usually, acquiring rights through registration is quicker than building up a substantial reputation and goodwill through use.
3. Without registration, an entity claiming rights in a trade mark is put to very considerable trouble and expense in establishing its rights, which would include the disclosure of sales figures, turnover and advertising expenses in goods bearing the trade mark since use commenced.
4. Registration gives notice to all interested parties of the rights claimed by the trade mark owner throughout the country as opposed to unregistered trademarks with a localized reputation confined only to the area where you are using your trade mark.
5. Registration endures indefinitely, subject only to the payment of renewal fees every 10 years.
6. Registration is usually an indemnity against attack on the use of a trade mark. It is, in fact, not possible for one registered proprietor to bring an action for infringement arising from the use of another registered trade mark.
7. Registered trademarks can be sold / assigned to third parties typically at a considerably higher price than unregistered trademarks.
8. Registered trademarks may be used as security for loans.
9. You can use a South African Trade Mark Registration to secure the earliest possible filing date (priority) in other countries.
10. It has been said that registration of a trade mark is the cheapest form of insurance available as it paves the way for the commercial exploitation protecting the underlying goodwill and reputation associated with your goods and services.
11. Registration allows for the effective appointment and proper control of licensees and franchisees.



## What is Copyright Protection?

Source: **Companies and Intellectual Property Commission (CIPC)**

A copyright is an exclusive right granted by law for a limited period to a writer, author, designer, etc. for his/her original work.

Unlike other forms of intellectual property, copyright does not need to be registered, except for cinematograph films.

The **Copyright Act** protects certain classes or categories of works. The following works are eligible for copyright in South Africa:

1. Literary works e.g. books, articles, manuals and written composition novels.
2. Musical works e.g. songs.
3. Artistic works e.g. paintings and drawings.
4. Cinematograph films e.g. programme-carrying signal that has been transmitted by satellite.
5. Sound recordings.
6. Broadcasts e.g. broadcasting of films or music.
7. Programme-carrying signals e.g. signals embodying a programme.
8. Published editions e.g. first print by whatever process.
9. Computer programs.

For a work to be eligible for copyright protection, it must be original and be reduced to material form.

Generally, in respect of written material, the following guidelines apply:

- Wherever possible, the author's permission should be sought to reproduce his/her work.
- If in an article, paper or speech, when referring to the work of another, it is required that details of the reference be provided in the form of the name of the author and details of his/her publication i.e. title of book or magazine, publisher, date of publication etc.

- If only a small portion of the work is used, say a few sentences or a paragraph, and provided that an acknowledgement is made, permission is not needed.
- If a "significant" section is reproduced, such as a chapter, then permission should be obtained.
- It is generally accepted that work that is being used in academic institutions, research or for private use may be reproduced.

### What does not constitute copyright infringement?

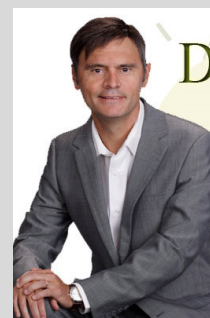
- Making photocopies for **private use** is not an infringement of copyright.
- Copying a public speech or a lecture does not constitute infringement.

No infringement results if work of the author or writer is acknowledged when one is copying or citing from another author's work.

### What is the lifespan of copyright?

The lifespan of copyright depends on the type of work protected:

- The copyright of literary works lasts for 50 years after death of the author.
- The copyright of computer programs lasts for 50 years after the first copies were made available to the public.
- For sound recordings, the copyright lasts for 50 years from the day the work was first broadcast.
- For films, 50 years from the date the film was shown.



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David is the managing principle/head of trademarks for Pretoria based intellectual property attorneys **de Chalains**, who have been BAN's appointed intellectual property legal advisors since 2006 . David qualified as an attorney of the High Court of South Africa and specialises in trademark and copyright matters.

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