

## [The Licensing Journal, A Common Branding Conundrum: Building a Brand with a Trademark That Is in Use by a Competitor, \(May 1, 2026\)](#)

The Licensing Journal

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### Trademark Licensing

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Consider the following scenario: you have just landed on a new brand name for your business or product. However, you discover that another business is already using it, but has not obtained a federal trademark registration. Can you still use the trademark and maybe even register it? The answer is potentially yes – but with some important caveats.

### Background on Federal Trademark Registration

Federal trademark registration with the United States Patent and Trademark Office (USPTO) grants powerful rights to brand owners. Registration gives you the following main benefits:

- Legal presumption that your trademark is valid.
- Public evidence that you own exclusive rights to the mark.
- Nationwide constructive notice to discourage copycats.
- The ability to sue in federal court, potentially with enhanced damages.
- The option to use the ® symbol on your mark.

The option to record your registration with U.S. Customs and Border Protection (CBP) to block imports that use an infringing mark.

But there is an important wrinkle: your registration doesn't automatically wipe out the rights of someone who used the mark first in a specific place, even if they never registered it. These earlier users are referred to as "senior users," and later users are referred to as "junior users." Trademark rights are improved by registration, but rights actually come from use in commerce. This means that the senior user will have initial priority and continuing rights to a mark.

### Can You Still Obtain Federal Trademark Registration as Junior User?

Often, yes. The USPTO will only consider your application against existing registrations and applications on the USPTO database. If a senior user never filed an application, the USPTO will not know about it and will not cite that mark against your mark, potentially giving you the ability to obtain full registration as a junior user.

However, senior users do maintain some rights, and since trademark usage without attempt at registration will not appear on the USPTO database, it is important to know about these common law uses. Therefore, a full clearance search (federal, state, and common law) is essential before you file, especially if someone is already using a similar mark where you plan to operate.

## **If You Get a Registration, Can You Stop the Unregistered Senior User?**

Not entirely. Your federal registration gives you nationwide priority as of your filing date, but it does not erase earlier common law rights. Because the senior user has been generating rights to the mark through use, they will likely be able to continue using their trademark in the geographic area where they established rights before your filing date.

Outside the senior user's established area, your registration can strengthen your ability to stop others from expanding after your priority date, including potentially limiting the senior user's expansion beyond their established footprint.

## **Can the Senior User Stop You from Using Your Trademark?**

Possibly. However, timing, geography, and likelihood of confusion matter. In their established territory, a senior user can often stop junior users (even those with federal registrations) from using a confusingly similar mark. Outside their territory, your registration can give you priority where the senior user has not established rights, which can limit their ability to block you. Courts consider who used the mark first in a given area, how each party uses the mark, whether the customers and channels overlap, and whether there's a likelihood of consumer confusion.

It is also possible for junior users to move to cancel your registration with the USPTO. However, it should be noted that cancellation is an expensive and complex undertaking. If the senior user is a company with the resources to pursue cancellation of your mark, it may be risky to pursue protection as a junior user.

## **Can You Expand into the Senior User's Area?**

This is a risky move. Entering a senior user's core market can trigger a dispute or an injunction if your use is likely to cause confusion. Practical options include negotiating a coexistence agreement that defines territories or channels, adopting a modified mark, or rebranding to avoid conflict. If the senior user's footprint is small or localized, careful planning may allow you to grow around it, but pushing into their core area carries high risk.

## **Conclusion**

Federal trademark registration is still the gold standard for protecting your brand. But a senior user can prevent you from using the mark in their established geographic area, even without a federal registration. A comprehensive clearance search (covering federal, state, and common law) before filing will help you assess risk and build confidence in your exclusive rights. Even if a senior user exists, you may be able to explore coexistence or consent agreements to move forward.