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Brands: 6 misconceptions of many entrepreneurs

Specialists in trademark law are sometimes struck by the preconceived ideas surrounding trademarks. Here is an anthology that will help to dispel some of the misconceptions:

- **« I have been using my trademark for many years on the market and therefore have a right to it. »**

Wrong: In order to own a trademark in Switzerland, you must have registered it with the Swiss Federal Institute of Intellectual Property. If you do not have such a registration, you are at most the owner of an unregistered distinctive sign, which unfortunately enjoys much less protection than a trademark. See our previous [post](#) on this issue.

- **« Today, I am being confronted with a trademark even though I have been using a comparable sign for many years. On the contrary, I should be the one to complain. »**

True and false. True, in the sense that from the moment that you were exploiting a sign in good faith before it was registered as a trademark by a third party, this third party will not be able to act on the basis of its trademark against you; you can therefore continue to exploit it as in the past, but you will no longer be able to expand your activities either materially or geographically. Wrong, however, in the sense that you cannot act against the third party, who is fully entitled to register a sign comparable to yours if you have not done so (except in very special circumstances), which is why it is ideally important to think about registering your sign as a trademark.

- **« A Zurich company is using its trademark to act against me when it has no business in French-speaking Switzerland, which is clearly abusive. »**

False: All that is needed is local use to enable the owner of a trademark to assert his exclusive rights throughout the whole of Switzerland.

- **« Once my trademark is registered, I can enforce it against anyone. »**

False, or at least to be qualified. Except in exceptional cases, a trademark does not confer an absolute monopoly. It only protects its owner against use by third parties for products that are identical or similar to those for which your trademark has been registered. When you register your trademark, you must define the list of goods and services for which you want it to be protected; it is this delimitation that will then define the scope of the protection conferred on your trademark.

- **« You cannot oppose a trademark against my domain name. »**

Wrong: A domain name in itself does not confer any intellectual property rights; if it is not registered, it is an unregistered distinctive sign. In other words, a third party who has registered a trademark can use it against you if they believe that your domain name infringes their trademark.

- **« If I register a trademark, I am obliged to use it in order to be able to use it.»**

True and false. False, in the sense that the legislator has taken into account the fact that when you register a trademark, your product may still be in the development phase and may not be marketed. You therefore have a period of five years during which you can assert your trademark against third parties, without being obliged to use it. True in the sense that, once this period has elapsed, if you do not use your trademark for the products or services for which you have registered it, anyone will be entitled to claim that you are not using it and request its cancellation.

Source : <https://www.wg-avocats.ch/en/news/intellectual-property/brands-6-misconceptions-of-many-entrepreneurs/>