



I Received a Letter/Email. . .



What is a cease and desist letter/email?

A cease and desist (or demand) letter/email is correspondence that states or suggests that you are potentially infringing the trademark of another and demands that you stop using, or consider stopping use of, the accused mark. You should treat any such letter/email seriously. Before deciding how to proceed, consider your options as described below.

What are my options?

Because there are several ways to respond to a cease and desist letter/email, and these options may each have significant legal ramifications, we recommend that you consult an attorney experienced in trademark disputes. Among the options are:

1. Respond

(a) If you have a basis for doing so, you may respond to the letter/email and deny infringement; or

(b) You may respond by requesting more specific evidence as to why the trademark owner believes you are infringing its mark, including exploring dates of first use, whether the mark is federally registered, and the geographic areas where the mark has been used.

2. Do Nothing

You may elect not to respond to the letter/email or any follow-up letters/emails. Some trademark cease and desist letters/emails are sent in the hope that some recipients will be misled or intimidated into stopping or paying for use even though they do not need to do so. However, the decision not to respond should not be made lightly because doing nothing carries some risk. If you are later found liable for infringement, the court may determine that you acted recklessly and subject you to additional monetary damages.

3. Negotiate

You may negotiate with the trademark owner for a license to use the mark on mutually agreeable terms, or to obtain an agreement that you do not infringe the trademark.

4. File Your Own Lawsuit

You may want to explore suing the trademark owner for a "declaratory judgment" stating that your mark does not infringe the trademark.

An attorney experienced in trademark disputes can help you decide among these and other options and how to implement them.

Does receiving a letter/email from the trademark owner mean that I'm being sued or will be sued?

Receiving a letter/email, without more, does not mean that you have been sued. Generally, if a federal lawsuit is filed against you, the trademark owner must serve two documents on you: (1) a document called a "complaint," which sets forth the claims made against you; and (2) a document called a "summons." The "summons" is issued by the clerk of court, and identifies the court in which you have been sued, contains an identifying case number, and tells you when you need to formally respond to the complaint. Service is usually made by delivering the documents to you personally or by delivering the documents to a registered agent for your business. Because of this service requirement, you will usually know when you have been sued.

You should consult a trademark attorney if you think that you may have been sued. Please see the "Do I need an attorney?" section below for further information.

What if the trademark is not federally registered, or the registration expired or was cancelled?

Federal registration is not required to establish trademark rights. Even if a trademark registration expires or is cancelled, the trademark owner may continue to have "common law" rights in the mark. Common law rights arise from actual use of a mark for particular goods or services and may allow the common law user to successfully challenge another party's use in court.

How can I use USPTO records to find out more information about the claimed trademark and who owns it?

You can use the [Trademark Electronic Search System](#) (TESS) to [search](#) the USPTO's database of applications and registrations. If you know the application serial number or registration number for the particular mark, you may use the [Trademark Status and Document Retrieval \(TSDR\)](#) system to view/download relevant application and registration records.

How can I challenge a trademark registration or application?

Several options exist to challenge another party's trademark registration or application, depending on the particular circumstances and grounds for challenging:

- You may challenge a trademark registration issued by the USPTO by filing a petition to cancel the registration with the [Trademark Trial & Appeal Board](#) (TTAB).
- You may challenge an application for trademark registration at the USPTO by filing an opposition with the [TTAB](#) within 30 days after it is published in the Official Gazette.
- You may file a declaratory judgment lawsuit, asking a court to declare that your mark does not infringe the trademark owner's mark, and/or that the trademark owner's mark is invalid.
- If you are already a defendant in an infringement lawsuit, you may assert an "affirmative defense" and/or a counterclaim against the plaintiff challenging the validity of the plaintiff's trademark.

Again, an attorney with trademark expertise can help advise you about the various options available to challenge trademark registrations and applications. Please see the "Do I need an attorney?" section below for further information.

Do I need an attorney?

While you are not required to have an attorney to respond to a cease and desist letter/email, an attorney can help you understand the scope of your trademarks rights and the strengths and weaknesses of the allegations against you. Though the advice and representation by attorneys can be expensive, the assistance of an attorney can be very valuable. An attorney may help you navigate the negotiation with your accuser and ultimately save you from additional costly legal problems.

The state bar association where you or your business is located and the various national bar associations have directories of attorneys. Look for an attorney who specializes in trademark litigation. For more information on local assistance, please visit the [Resources](#) webpage.

Related Links

[Resources and Glossary of Trademark Terms](#)

[Search Trademarks](#)

Sources

[Trademark Manual of Examining Procedure](#) (Oct. 2014)

[Trademark Trial & Appeal Board Manual of Procedure](#) (June 2013)

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