

# Publications

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## Trademark Risks in the AI Age: Navigating Infringement, Dilution and Genericness

### Key Takeaways

- **Artificial intelligence (AI) tools are accelerating risks of trademark infringement, dilution and genericness** by enabling the rapid creation of brand-like content—including logos, names and imagery—often without users realizing they’re mimicking protected marks.
- **Even unintentional AI-generated branding can expose companies to liability** under federal and common law, especially where there’s a likelihood of consumer confusion or dilution of a famous mark’s distinctiveness.
- **Brand owners and startups should actively monitor AI use, enforce IP rights and conduct proper clearance** before adopting AI-generated branding to avoid exposure and preserve trademark value.

AI tools are having a direct impact on brand owners and those looking to create their brands. Like any powerful tool, its advancements are often offset by certain trade-offs. While AI unlocks new opportunities for companies, it also amplifies existing risks of trademark infringement, dilution and genericness. As they adapt to AI’s ever-evolving influence, companies and practitioners alike should consider these risks and how best to mitigate them.

### Trademark Infringement Risk: AI Prompts Can Lead to Liability

AI tools operate with massive amounts of data, and generative AI has the capacity to assist individuals or companies to create logos and brand names upon command. By using these quick and efficient tools, graphics can be created without the expense of a traditional graphic designer. However, AI may mimic or replicate pre-existing trademarks unintentionally, leading to a heightened risk of trademark infringement.

This risk affects both established companies and startups. Brand owners may face dilution or direct infringement issues, while startups risk unknowingly adopting marks that infringe existing rights. Existing brands need to be more diligent in their monitoring and enforcement, and startups need to ensure that they understand the inherent risks of adopting trademarks and do their own proper diligence.

### Related People

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### Related Capabilities

- Intellectual Property
- Intellectual Property Litigation
- Trademark, Copyright & Branding
- Trademark, Copyright & Branding Litigation
- Artificial Intelligence & Machine Learning

The standard for trademark infringement under the Lanham Act is tripartite. It requires 1) ownership of a valid trademark, 2) unauthorized use in commerce and 3) a likelihood of consumer confusion.<sup>1</sup> Trademark rights can also be asserted through common law rights, where ownership of a valid trademark registered with the United States Patent and Trademark Office is not necessary.

Regardless of whether trademark rights are being asserted for a registered or unregistered mark, liability does not require access to or knowledge of the trademark that is being infringed. This means a company can infringe another's mark even where it develops its own mark independently. Importantly, infringement hinges on whether the accused infringer's use of its mark in commerce is likely to confuse consumers about the product or service's source, sponsorship or affiliation. So, in a situation where a company adopts an AI-generated design as its logo, and the logo is confusingly similar to an existing logo, the company may face liability for trademark infringement. An improper prompt could lead to the creation of branding that mimics the more popular brands in a category, heightening the risk of infringement. The company's knowledge of an existing logo or good faith intent to avoid copying another's logo is immaterial, so long as there is a likelihood of confusion between the marks.

### **Dilution Risk: AI Content Can Weaken Famous Marks**

Beyond trademark infringement, AI-generated logos and designs that resemble existing marks pose another concern: they can erode the distinctiveness of these well-known, existing marks. The Lanham Act protects famous brands even when there is no likelihood of confusion, under the principle of "dilution."

Dilution occurs when a third-party utilizes a famous mark in an unauthorized way that weakens its distinctiveness or reputation, even without causing confusion among consumers. It primarily takes two forms: blurring, which weakens the mark's singular ability to identify a product, and tarnishment, which harms the mark's reputation by associating it with inferior or offensive goods or services. AI tools make it easier than ever to mimic the look and feel of famous brands in creating new designs, logos, branding and personal, non-commercial styles. To succeed in a dilution case, the brand owner must show that their mark is 1) famous, 2) used in commerce and 3) used in a way that blurs its distinctiveness or tarnishes the brand's reputation regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.<sup>2</sup>

As these tools make it easier to mimic famous logos, imagery and brand aesthetics, the dilution risk is no longer theoretical. Well-known brands are already seeing viral trends and AI-generated content that blur their distinctiveness, prompting increased enforcement efforts.

One common example is utilizing the "style of" a famous brand. For example, a viral trend in the last few years saw AI image generators creating "Pixar-style" memes that resembled fictional Disney characters, misappropriating Disney and Pixar logos.<sup>3</sup> In an effort to comply with Disney's requests, Microsoft blocked the word "Disney" from use in its Bing AI imaging tool<sup>4</sup>, although this did not completely mitigate the harm of infringement and dilution. In another instance, Getty Images filed a complaint<sup>5</sup> against Stability AI, Inc. for, inter alia, trademark dilution under both federal and Delaware trademark law and trademark infringement relating to the unauthorized use of Getty Images' trademarks, where generative AI outputs allegedly replicated Getty Images' watermarks. These examples show how quickly brands must act to prevent reputational damage and dilution, especially when misuse spreads virally. Unauthorized use of a company's intellectual property, even in seemingly innocuous contexts, can weaken its marks and mislead

consumers.

In another recent example, *Hermès v. Rothschild*, an artist created “MetaBirkin NFTs” depicting digital images of fuzzy Hermès Birkin bags, leading consumers to believe that Hermès authorized or was affiliated with the NFTs. Hermès sued for trademark infringement, dilution and cybersquatting and was awarded \$133,000 in damages after the jury found that Rothschild’s use was misleading.<sup>6</sup> An appeal is underway, as Rothschild argues that his work falls within protected artistic expression.<sup>7</sup> This case highlights that artificially generated images or goods are not necessarily shielded from liability where consumers are misled or where the distinctiveness of famous brands is diluted.

As the convenience of AI tools explodes, we expect to see more and more examples of dilution concerns where logos or other imagery are created in the style of a famous brand, blurring the distinctiveness of the brand’s trademark rights or tarnishing the brand’s reputation.<sup>8</sup> Brand enforcement efforts to preserve trademark distinctiveness are critical, as the prevalence of look-alike AI-generated imagery can erode the strength of famous marks and impede the success of future dilution claims.

### **Genericness Risk: AI Can Turn Brand Names Into Common Terms**

Brands must also consider the risk of AI accelerating genericness of a brand name. For example, if AI chatbots begin using a brand’s trademark as the generic word for a product category, over time, the trademark may lose its ability to signify the brand as the *source* of the goods or services and come to signify *the* goods or services, generally. The very purpose of trademark rights is to allow marks to serve as source identifiers, thereby protecting both brands and consumers. However, when trademarks become generic, they no longer serve as source identifiers, and trademark rights are lost.

### **Practical Steps for Brand Protection in the AI Era**

As generative AI becomes a common tool for creating look-a-like marks and logos, the risk of infringement, dilution and genericness will only grow. Brand owners can’t afford to take a passive approach. Below are proactive steps companies should take to mitigate exposure and preserve the strength of their marks:

1. **Monitor user-generated content and AI platforms.** Brand owners should monitor user-generated content as well as AI platforms—including internal AI programs or AI interfaces designed for customer inquiries or interactions—for misuse and misappropriation of protected marks.
2. **Submit takedown notices promptly.** When misuse occurs, brands should act quickly to prevent consumer confusion or dilution of their marks.
3. **Vet AI-generated branding before adoption.** New entrants to a market should be careful when using AI to create branding. AI often draws from dominant market players, increasing the risk of mimicking a competitor’s branding. Utilizing a specific trademark clearance service or discussing with a trademark professional will help mitigate this risk.
4. **Review contracts with vendors and platforms.** Brands should ensure their agreements prohibit unauthorized use of logos in AI-generated content.
5. **Collaborate with developers on guardrails.** Particularly where training data may include proprietary brand assets, brands should work with AI developers to restrict AI-generated outputs that pose risks of infringement, dilution or genericness.
6. **Educate internal marketing teams.** Marketing, creative and product teams should understand the legal risks of using AI tools for branding or content development to help avoid liability.

1 15 U.S.C. § 1114.

2 15 U.S.C. § 1125(c).

3 See e.g., Jmfries, *Disney Has Taken Notice of AI-Generated Pixar Posters*, The University of British Columbia (Nov. 27, 2023), <https://iplaw.allard.ubc.ca/2023/11/27/disney-has-taken-notice-of-ai-generated-pixar-posters/>; Amid Amidi, *Report: Disney Asked Microsoft To Prevent AI Users From Infringing Its Trademarks*, Cartoon Brew (Nov. 18, 2023) <https://www.cartoonbrew.com/tech/report-disney-asks-microsoft-to-prevent-ai-users-from-infringing-its-trademarks-235039.html>.

4 *Id.*

5 Getty Images first filed a complaint in the District of Delaware. See *Getty Images (US), Inc. v. Stability AI, Inc.*, No. 1:23-cv-00135-JLH (D. Del. 2023). It has since filed a notice of voluntary dismissal without prejudice after jurisdictional issues were raised in the case, and the United States District Court for the District of Delaware closed the case on August 18, 2025. On August 14, 2025, Getty Images filed another complaint in the Northern District of California. See *Getty Images (US), Inc. v. Stability AI, Ltd. et al*, No. 3:25-cv-06891-TLT (N.D. Cal. 2025).

6 *Hermès v. Rothschild*, No. 1:2022-cv-00384 (S.D.N.Y. 2023).

7 *Hermès International v. Rothschild*, No. 23-1081 (2d Cir. 2023).

8 This may become analogous to the copyright issues faced by photographers in the early days of the internet, but the effect is even more detrimental, considering the harm to the reputation caused by the dilutive activities.