

Trademarks 101:

What Life Sciences Companies Need to Know About Brands

Brands can be strategically useful, high-value assets in a life sciences company's IP strategy. With the growing marketing emphasis on life sciences brands—from proprietary platform names to branded clinical trials to drug names—early attention to brand strategy has become increasingly important, particularly given the need in the U.S. to navigate both U.S. Food and Drug Administration (FDA) and potential United States Patent and Trademark Office (USPTO) approval. Failure to adequately address brand strategy early can result in an inability to use a desired name or, worse, potential liability.

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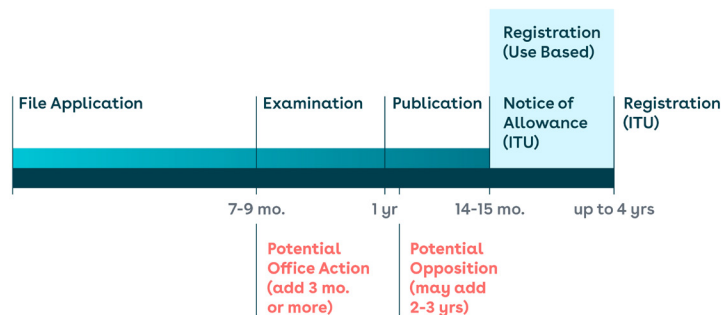
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Important Considerations

- *FDA and Trademark Naming Approvals Are Different.* When reviewing potential names, the FDA and the USPTO both consider whether the new name is likely to cause confusion with respect to pre-existing third-party names. However, the FDA proprietary name review process is independent of the USPTO review process. It is possible that a party could obtain FDA approval without being able to secure trademark rights, or vice versa. Formulating a strategic back-up plan can be especially important for life sciences companies.
- *Brand Clearance Saves Big Headaches.* Best practice is to conduct clearance searches on names and logos to help assess availability and risk level before selecting a new brand. Legal clearance is often done in parallel with the creative work done by branding agencies. Clearing clinical trial names can also be key, as many companies grow attached through early use but later find there is a bar to registration or expanded use.
- *Trademark Filings Are Particularly Important Tools for Life Sciences Companies.* Trademark applications can be critical to locking in trademark rights for life sciences companies given their years-long path to commercialization. For example, company name use, domain name use, use of a name merely with investors, name use merely for marketing, or use in connection with internal R&D generally does not establish trademark rights. Trademark filings also put third parties on notice of a company's rights and help safeguard the name from unauthorized and infringing use.
- *Early Focus Is Critical.* Brand rights are "first come, first served." Waiting until later-phase studies to secure brand rights, for example, may be too late.
- *Trademark Protection Provides Flexibility.* Trademark applications can be filed broadly initially to encompass a range of potential indications, and can later be tailored to reflect actual offerings when the full range of drugs or targets becomes clear.
- *Trademark Rights Are Jurisdictional.* Foreign trademark filings can be an important IP bulwark. Life sciences companies can strategically benefit from targeted foreign filings. For example, a single EU filing covering all EU countries is often a cost-effective "no brainer."

Typical U.S. Trademark Application Timeline for Life Sciences Companies



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