

Company sign and Trademark¹

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Similarities and Differences

The German Trade Mark Act distinguishes between trade marks and company signs. Even though both protective rights grant the same prohibition right in principle, there are important differences to note. The following overview shows the essential similarities and differences:

Criterion	Company Sign	Trade Mark
Object	Enterprise or Business Operation (Company name), e.g. <i>Siemens</i>	Product or service e.g. <i>Coca Cola</i> or <i>German Postal Service</i>
Condition for Protection	Distinctiveness for the goods and services concerned (suitability as an indication of a specific company of origin, not a purely descriptive indication of the goods and services concerned)	
Emergence of Protection	Use of the name : by proven usage in the course of business Use not in the form of a name : proof of public recognition	by registration (or, exceptionally, by proof of public recognition as a result of use)
Object of protection	the sign in the form that it is being used	the sign as registered ²
Material scope of protection	sector (branch) of economic activity in which the sign is used	the registered goods and services
Geographical scope of protection	in the geographical area ³ of the economic activity	throughout Germany
Right of Prohibition	Use of an identical/similar sign in the course of trade by third parties in the same/similar sector if there is likelihood of confusion	
Law enforcement	the emergence of protection must be proven in the court proceedings, therefore higher risk of litigation	on the basis of the trade mark registration , but after expiry of the five-year grace period for use only enforceable to the extent of provable use
Loss of right or protection	by termination of use or enforcement of prior rights of third parties (injunctive relief)	by non-renewal , enforcement of prior rights of third parties (opposition/invalidity proceedings) or non-use for at least five years (for the respective goods/services)
Costs	no costs for obtaining, maintaining and defending protection, but in the event of a dispute higher litigation risk and higher litigation expenses and associated higher costs , since the basis for the claim can only be clarified in the litigation.	costs for obtaining, maintaining and defending the trade mark

Whether additional protection as a (registered) trade mark could be appropriate for a company sign, depends in particular on whether a later geographical expansion of the economic activity is intended. In the case of a single sales outlet without the intention of expansion, protection as a company sign may be sufficient; keeping evidence of the start and the extent of the business activity using the sign is recommended.

A preliminary search for the rights of third parties is recommended in any case before starting to use the sign.

¹ This comparison only refers to the individual trade marks, without taking into account the collective and certification marks, whose marking purpose differs.

² Black and white representation applies to each colour combination in the same contrast, coloured representation only for the registered colour(s).

³ Internet presence alone is not enough for protection throughout Germany.