

# Can I protect and register my hashtag?

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On social media, individuals and companies advertise and promote their businesses and brands through hashtags, which have become so popular that they are being used in starting trends, raising awareness, buying and selling products and services, entering competitions and winning prizes.



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This leads to the question - can I protect and register my hashtag? #isthispossible?

The Merriam-Webster Dictionary defines the word 'hashtag' as "a word or phrase preceded by the symbol # that classifies or categorises the accompanying text." The use of hashtags therefore makes it simpler when one would like to view something specific that people have tweeted, used on Instagram or on many other forms of social media.

Just as any form of intellectual property, one could indeed protect this type of product of human intellect. A company can prevent competitors from using the same or similar hashtags by merely registering its hashtag. #GetIt? By registering this trademark, one can prevent consumer confusion and protect one's reputation.

## US ruling

An adventurous applicant in the US attempted to register the word 'hashtag' as a trademark, which would be used in broadcasting, entertainment and television advertising. The United States Patent and Trademark Office (USPTO) did not accept this application because it was merely describing the applicant's services and the term is widely used by many other individuals.

The USPTO has stated that one can register a hashtag but only if it functions as an identifier of the source of the applicant's goods or services. An example of this could be the registration of #innovation in the recruitment agency field, however, one cannot register #fryer for a frying pan or #corker for a corkscrew as this is not distinctive but merely descriptive and generic. For registration purposes, one would need to provide evidence of the use of the mark in association with the relevant goods or services.

The trademark #HASHTAG was registered in South Africa in 2014 for goods/services related to fashion apparel and accessory labels.

## Successful applications

In order to determine whether there is possible infringement of a trademark, one would consider whether the likelihood of confusion exists. The purpose of registration and protection is to promote distinctiveness and prevent other individuals from taking advantage of this distinctiveness.

Examples of other hashtags registered as trademarks to date include Coca-Cola's #cokecanpics and #smilewithacoke. A chain of Mexican restaurants known as Taco John's successfully stopped its competitor, Iguana Grill, from using #tacotuesday as Taco John's had registered this hashtag as its mark. Other examples include #FINISHIT, used for anti-smoking advertisements and #GOHARD for clothing. All these hashtags are effective marketing tools and they serve a functional purpose.

In conclusion, before registering a hashtag as a trademark, a company or individual should consider whether they intend to use the specific hashtag over a long period of time and therefore whether it is actually worth spending time, finances and resources to protect it. #ThinkBeforeRegistering.

## ABOUT THE AUTHOR

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