WESTERN NEW YORK
THE DAILY RECORD
Part of the BRIDGETOWER MEDIA network
FEBRUARY 18, 2026

EXPERT OPINION

# Who really owns your trademark? Ownership pitfalls for start-ups and closely held businesses


Alana Fuierer

Businesses often file federal trademark applications early — sometimes before a legal entity even exists. Later, businesses may assign intellectual property (IP), including registered trademarks, to an individual owner or a corporate affiliate for restructuring or other strategic reasons. These decisions may seem administrative, but they can carry significant consequences if ownership of a brand does not align with the operating entity.

A recent Second Circuit decision underscores the importance of aligning trademark ownership with corporate structure. In *Ripple Analytics Inc. v. People Ctr., Inc.*, 153 F.4th 263 (2d Cir. 2025), the court dismissed a trademark lawsuit before reaching the merits because it found that the corporate plaintiff did not own the federal trademark it asserted.

## BACKGROUND OF THE DISPUTE

The dispute stemmed from the use of nearly identical marks for similar services by two different companies. It began when the defendant, People Center, Inc. ("People Center"), applied to the United States Patent and Trademark Office (USPTO) in 2017 to register the service mark "RIPPLING" for use in connection with human resources-related software. The USPTO rejected the application based on Ripple Analytics Inc.'s ("RAI") trademark registration, U.S. Reg. No. 5,430,908, for the mark RIPPLE®. According to RAI's registration, it began using the mark RIPPLE in April 2015 for human resources-related software.

In 2018, following the USPTO's initial refusal, People Center abandoned its trademark application but continued to use "RIPPLING" in connection with its business.

## SECOND CIRCUIT DECISION

On February 19, 2020, RAI filed a complaint against People Center asserting claims for trademark infringement under 15 U.S.C. § 1114; unfair competition under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); and unfair competition under New York state law. The problem? RAI was the named plaintiff, but the corporate entity had assigned all of its IP, including its registered trademark RIPPLE®, to its co-founder, CEO, and President during a restructuring two years earlier in April 2018.

The district court proceedings and appeal ultimately turned on whether RAI could demonstrate standing under the Lanham Act despite not being the trademark owner of record. In trademark cases, standing is typically established by ownership of the mark or a valid assignment of rights. In certain circumstances, an exclusive licensee may also have standing.

In *Ripple Analytics*, the district court dismissed the case on the ground that RAI failed to establish that it owned the mark or had legal authority to sue, and the Second Circuit agreed. The court emphasized that trademark standing is not satisfied merely by affiliation, commercial use, or shared branding. Rather, the plaintiff must demonstrate a concrete ownership interest or a legally enforceable right derived from the owner.

RAI argued that the trademark owner authorized the litigation and the relationship between the entities was sufficient to allow enforcement. The Second Circuit, however, found no valid assignment in the record and no formal ratification that would cure the standing defect, and the court dismissed the case before any sub-

stantive analysis of confusion, competition, or damages.

## PRACTICAL APPLICATION

*Ripple Analytics* appears to be a procedural decision limited to a specific fact pattern. However, businesses frequently separate trademark ownership from operating entities. For example, marks may be held by:

- An individual owner or co-founder in an individual capacity
- A parent corporation
- An IP holding company
- A separate entity created for tax or liability purposes

Operating affiliates may use the marks under formal or informal license agreements. These corporate structures may make business sense, but they can also create unexpected consequences, as RAI discovered.

The decision highlights an intellectual property risk frequently overlooked—particularly in start-ups and closely held businesses—and offers several practical takeaways.

## TAKEAWAY 1: THE FOUNDER FILING PROBLEM

A common ownership mismatch arises when an individual forms a business and launches it under a new trademark before formal incorporation. In this scenario, founders may file a federal trademark application personally. Later, the business converts to an LLC or corporation, but the trademark registration remains in the founder's individual name.

This mismatch may appear harmless. The founder controls the company, the company consistently uses the trademark, and everyone understands who "owns" the business and the brand.

Legally, however, the individual and the entity are separate. If infringement arises and the LLC files suit, a defendant may challenge standing. If the founder files suit personally, questions may arise about whether the entity—not the individual—is the true user and owner of the mark.

Without a clear written assignment and a recorded transfer to the corporate entity, enforcement can become complicated, as the *Ripple Analytics* decision demonstrates.

## TAKEAWAY 2: FILING UNDER THE WRONG NAME

A more serious variation of this scenario may also occur—filing in the wrong name from the outset. Under federal trademark law, an application must be filed by the true owner of the mark at the time of filing. 15 U.S.C. § 1051(a); TMEP § 803.06. If the named applicant was not the "true owner," the application can be void from the beginning and cannot be cured by a later assignment. See, e.g., *Wonderbread 5 v. Gilles*, 115 USPQ2d 1296, 1303 (TTAB 2015) ("Only the owner of the mark may file an application.").

For example, this may occur when:

- A corporation is already using the mark, but the founder files individually.
- An affiliate files the application even though another entity controls and uses the brand.
- The business has been transferred, restructured, or acquired, but the original entity files the application.

In these situations, recording a later assignment may not cure the defect. If the wrong party filed the application, the error could render both the application and any resulting registration void *ab initio*.

## TAKEAWAY 3: THE INTENT-TO-USE APPLICATION TRAP

Intent-to-use (ITU) applications present an additional risk. Under federal law, an ITU application cannot be assigned before the mark is used in commerce unless the assignment transfers the entire business and its goodwill. 15 U.S.C. § 1060(a)(1); TMEP § 501.01(a). An assignment that violates this restriction may render the application and any resulting registration void. See *Clorox Co. v. Chemical Bank*, 40 U.S.P.Q.2d 1098 (T.T.A.B. 1996).

This restriction can create unintended consequences under a common scenario in which a founder files an ITU application personally, forms the company months later, and then transfers the ITU application to the company before the product launches. In another common situation, a company assigns an ITU application to a bank as collateral for a loan prior to filing a statement of use.

If no operating business or goodwill exists at that time of transfer, the assignment is likely invalid, which can jeopardize the validity of the application and any resulting registration. For early-stage companies, the safest approach is often to file in the correct entity name from the outset—or to carefully evaluate timing before attempting to correct ownership or transfer the application.

*Alana M. Fuierer, Esq. is a partner in the Rochester Office of Heslin Rothenberg Farley & Mesiti P.C. She is an experienced attorney in all forms of intellectual property matters including trademark, patent, copyright, design, and trade dress prosecution and infringement actions. If you have any questions, please feel free to reach out to her at 585-288-4832 or alana.fuierer@hrfmlaw.com.*