

# Trademark Owner as Adverse Possessor

- The process by which a trademark owner acquires a trademark is surprisingly similar to way one can adversely possess real property, *i.e.*, become an owner by occupying the property
- Counter to the standard assumption, a successful defense against a claim of trademark infringement rarely invokes “property rights” and is unlike
- Unlike the public domain or “commons” of inventions or creative expression, the trademark public domain, *i.e.*, the rights of the public to use and define a trademark are active, communal and use-based instead of passive, contingent and time-based.

## Next steps:

Studies comparing trademark ownership to other real property regimes

An empirical study of trademark cases to determine whether there are recognizable patterns in time required to acquire distinctiveness or commercial strength

Real Property	Factor	Trademark Rights
Must possess property...	Actual	Must actually use the mark...
...in the same way as other property owners...	Open and notorious	... “in commerce”, <i>i.e.</i> , as a trademark.
...for the statutory period...	Continuous	Mark owner gets some certainty at 5 and 10 year windows, but otherwise must use the mark continually
...without allowing others to possess it...	Exclusive	Mark owner must police the mark against both competitors...
...and without permission from the title holder	Against claim of right	And the public, who are effectively “title holders” empowered to reclaim the mark at any time

Jake Linford  
Assistant Professor of Law  
Florida State University College of Law

850-644-3449  
[jlinford@law.fsu.edu](mailto:jlinford@law.fsu.edu)  
My articles can be viewed at  
<http://ssrn.com/author-581663>