



Identity & Origin  
Trademark

# Trademark Priority

Eric E. Johnson

ericejohnson.com



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## Trademark Priority

- Two different firms can't both have the same trademark in the same market, because that would mean the mark doesn't indicate a particular commercial source.
- Between two rivals to the same mark, priority belongs to the first to use the mark in commerce in the relevant market (both product and geographical).
- Federal registration and geography:
  - Federal registration (on the principal register) provides constructive nationwide use.
  - Prior users get to carry on in their geographic market.
  - But constructive nationwide use gives the federal registrant priority everywhere else.









1953: A Burger King ("Big BK," destined for big things) opens in Jacksonville, Florida.

1957: Big BK now 38 restaurants across six southern states.

1957: A differently owned Burger King ("Little BK") opens in Mattoon, Illinois.

1961: Big BK federally registers (getting constructive nationwide use).

1962: Little BK tries to open a "Burger King" in Charleston, Illinois. Not allowed. But the original Mattoon BK can continue indefinitely.