



## What's in a (crypto) name?

By Leslie Hartford and Jason Kravitz

Over the past year or so, blockchain-based cryptocurrencies have vaulted out of their niche financial sphere into the mainstream, with significant attention devoted to bitcoin's massive price spike and recent pullback. All this activity has spawned a spate of companies offering complementary services and products, many of which use "bitcoin" in their entity names. Designed to attract consumers and make clear the business' offerings, this trend raises questions from a trademark perspective about the protection afforded to the names of specific cryptocurrencies. That is, can a company other than the entity that issues or develops a cryptocurrency use the name of that currency in its trademark?

Some cryptocurrency issuers have taken the position that the name of their currency should not belong to any one entity; rather, the term should be freely used like "dollar" or "yen."<sup>1</sup> The Bitcoin Foundation was one of the first to announce that it intends "bitcoin" to be available for public use. More recently, Litecoin has taken the same approach, publicizing its intent to release the term "to the public free of use for any products and services."<sup>2</sup>

The practical effect of the position taken by Bitcoin and Litecoin is that the terms "bitcoin" and "litecoin" must now be treated as generic or unprotectable. Parties that attempt to register a mark containing one of these terms should therefore disclaim the term. As an example, a party could apply for the mark "Bitcoin Bulletin," but would need to disclaim the term "bitcoin" within the mark. Given the number and variety of live applications for these types of marks, including some creative combinations ("Do you even Bitcoin, Bro?" and "I'm So Money I'm Bitcoin"), it will be worth watching how the USPTO treats these marks.

Interestingly, regardless of whether an issuer believes that its currency term should be available for public use, the issuer still must take steps to oppose registration of the term alone by third parties. Otherwise, the third party would gain the ability to restrict use of the term and, if successful, could wrest such control away from the issuer itself.

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<sup>1</sup> <https://bitcoinfoundation.org/the-bitcoin-foundations-view-and-policy-on-trademarking-bitcoin>

<sup>2</sup> <https://coinjournal.net/litecoin-trademark-fight-matters>

Thus, issuers must consider how they wish to treat their cryptocurrency mark. Even if the issuer decides that the term should not belong to any one entity, it may need to take steps to protect the mark from being co-opted by a third party who could then attempt to control its use. Given how fast this market moves, companies must be constantly alert to third-party attempts to register or use their marks, whether in a shared industry or a separate market in an attempt to benefit from the mark's goodwill. Furthermore, it remains to be seen how trademark offices will treat the generic or disclaimed terms in these multiword marks, which will inform a cryptocurrency issuer's incentive to protect or donate its token's mark.

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