

Understanding Trademarks



The average American encounters thousands of trademarks each day—from the closet to the kitchen, on the way to school or to work, in newspapers and magazines, on TV and radio, in supermarkets, arcades, restaurants and shopping malls. We are surrounded by trademarks.

Just what is a trademark? Trademarks provide us with valuable information. They are source indicators that allow us as consumers to know what to expect in the quality of a product or service. They allow us to buy with the assurance that we are getting products or services that we liked in the past or to avoid those products or services we did not like. In addition to offering protection to the consumer, trademarks are often a company's most valuable assets. They stand as emblems of a company's reputation and good will. Often, consumer confidence and trust built upon brand loyalty encourages product sales.



A trademark includes any word, name, symbol, sound, scent, or device, or any combination used, or intended to be used, in commerce to identify and distinguish the goods of one manufacturer or seller from goods manufactured or sold by others, and to indicate the source of the goods. In short, a trademark is a brand name. Sound and scent marks are protected in the United States, but not all countries protect them. A service mark is the same as a trademark except that it identifies and distinguishes the source of a service rather than a product, such as a dry cleaning service or banking services.

A trademark may be registered at the U.S. Patent and Trademark Office. A federal registration is not required, but does provide advantages. The symbol ®, which indicates federal registration, puts the world on notice that the trademark owner has exclusive rights to use it for particular products or services in the United States.

Your Turn:

Look around the classroom or in magazines and newspapers, to identify everyday trademark products. List on a separate page.

Brand vs. Generic

A trademark is known as a **brand** name. Most inventions have two names – a brand name and a generic name. For example, think about Coca-Cola. You may know it as Coke – the brand name, but its generic name is soda or pop. It is important for new inventions to be given both a brand name and a generic name. That way people identify it generically, and associate the brand with quality and desire to purchase.

Some of our everyday words were actually once registered trademarks in the United States. *Escalator*, *aspirin* and *yo-yo*, along with many other words, have been so commonly mis-used that they have lost their trademark significance and are now generic names for those products.

Companies spend millions of dollars to advertise their products, so no company wants their trademarks to be used generically. The Kimberly-Clark Corporation, which owns the trademark Kleenex for facial tissues, and the Xerox Corporation are two examples of companies that have spent time and money in court to enforce their trademark rights.

Can you match the following trademarks with generic names for the products or services?

| | |
|--------------|---------------------------|
| ROLLERBLADE® | Overnight courier service |
| COKE® | Facial tissue |
| KLEENEX® | Photocopier |
| XEROX® | Soft drink |
| FEDEX® | In-line skate |

Marketing makes the brand name a desired one.

Think About It

Band-Aid is a registered trademark that was almost becoming generic to mean any adhesive bandages. To guard against this, Johnson & Johnson changed the lyrics of their famous commercial jingle from *"I am stuck on Band-Aids, 'cause Band-Aid's stuck on me"* to *"I am stuck on Band-Aid brand, 'cause Band-Aid's stuck on me."*

- What types of "brand" names do you buy? Why?
- Identify some service marks that you are familiar with.
- How does a trademark make a difference in the bottom line – or money?
- If a trademark becomes generic as in the case of the escalator, do you think it is a good thing for the company who created the trademark? Why or why not?

Why are Trademarks Important?

Trademarks can help make an invention sell. Trademarks identify the source or origin of a product or service. Trademarks, or brand names, can also come to signal quality of a product to consumers. A shopper may be more inclined to pick up the Tylenol bottle due to the name, rather than the generic equivalent.

Points to Note:

- A federally registered trademark can be renewed forever.
- Trademarks can be lost if the name becomes generic.
- TM and SM are the symbols to alert the public that the owner is claiming rights to a trademark or service mark.
- Registration of trademarks at the U.S. Patent and Trademark Office is not necessary but helps with enforcing protection.

Do You Know?

The Symbols of Trademarks

Any time you claim rights in a mark, you may use the TM (trademark) or SM (service mark) designation to alert the public to your claim, regardless of whether you have filed an application with the USPTO. However, you may use the federal registration symbol ® only after the USPTO actually registers a mark, and not while an application is pending. Also, you may use the registration symbol with the mark only on or in connection with the goods and/or services listed in the federal trademark registration.

Developing a “Brand” Name



Developing a brand name isn't as easy as it sounds. There are guidelines to consider to make sure your name is fully protected under trademark law. Trademarks must do more than merely describe the goods or services. Remember, the main purpose of a trademark is to serve as a source indicator. Take a look at the scale below.

| Fanciful/Arbitrary | Suggestive | Descriptive | Generic |
|-------------------------|------------|-------------|-----------------|
| Very Protectable | <<<<< | >>>>> | Not Protectable |

The farther to the left of the scale the name is, the more it can be protected and guaranteed under law. So what do we mean by each of these terms?

Fanciful: New words that had no meaning before their use as a trademark. Example: Starbucks, Verizon, Cingular, Exxon.

Name Origins: Starbucks is a name from the novel Moby Dick. Starbuck was the name of the coffee guzzling first mate on the crew. The company registered Starbucks in 1978 to identify their corporation.

Arbitrary: Common words used so that their original meaning has no relationship to the goods or services to which they are applied. Example: The trademark Apple for computer products – an apple has nothing to do with computer products.

Name Origins: The symbol for the Goodyear Corporation – the Wingfoot logo – was based upon a newel post on the household stairs of the company founder, Frank Seiberling. This newel post held a statue of Mercury, the swift messenger of the Gods. The word WINGFOOT was registered with the USPTO in 1919, but the actual design wasn't registered until 1933 for use in connection with storage batteries and spark plugs.

Suggestive: These trademarks allude to a quality or characteristic of the product or service. For example, the name Jaguar implies speed – a quality that is desirable in high end cars also named Jaguar.

Name Origins: The Nike swoosh is a logo designed by a young graphic design student in 1971 for the Nike Corporation to help them identify their company – named for the winged goddess of victory.

Descriptive: These names describe the service or product such as Autoway – a store for autos, or Frosted Flakes to describe flakes of frosted cereal. Descriptive names may be easier to market but harder to register. A merely descriptive name is not entitled to federal registration. Therefore, to register a trademark, the company must show that consumers identify it as a particular brand from a specific source.

Name Origins: Oral-B Laboratories first registered the name Oral-B in 1951. The name is a combination of oral hygiene and the letter B which stands for better.

Generic: A generic term identifies a type of product or service, without indicating any particular manufacturer or source. For example, cola and soda are generic terms, PEPSI® and COKE® are trademarks used to identify types of cola and soda. Trademarks can lose their ability to identify the source of specific products when the public begins using them as generic names of products. For example, escalator was once a trademark in the United States for the product known as a moving stairway. At one time, aspirin also was a trademark in the United States.

Can you think of others?

Directions: In your groups, develop a trademark name for your invention. Select a category, from those listed, above for your trademark. Do you want to go completely new and original, or suggestive, or descriptive? Remember, the more new and original, the more difficult to market to consumers. Also develop a generic name to describe your product. Finish up by designing a logo (or slogan, or jingle) to market your product.

Trademark Name:

Generic Name:

Logo (or slogan, or jingle):