

TRADEMARK

**PROTECTING YOUR COMPANY'S BRAND
AND LOGO**

TRADEMARK

- Words, symbols and designs, sounds, distinctive colors- virtually anything that can be used to identify specific goods or services and distinguish them in the market from other similar goods or services - is *potentially* a trademark.

TRADEMARK

To be a trademark the items must past several test:

- It must be actually used as an identifier of particular goods or services: you cannot get a trademark in some great new name you've come up with for you new product until you actually start using the name to identify that product.
- It has to be in some way distinctive, not what courts call “ordinary” or merely descriptive” or “generic”; you can't use trademark to protect the common name of your product.
- The mark must not be “confusingly similar” to anyone else's trademark that is already in use.

TRADE VS SERVICE MARK

- **Trademark**

- a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs, that identifies and distinguishes the source of the goods of one party from those of others.

- **Service mark**

- the same as a trademark, except that it identifies and distinguishes the source of a service rather than a product.

OBTAINING A TRADEMARK

You create a distinct item for use and begin using it.

It does not have to be registered, but that affords it greater protection.

To register a trademark, you apply to the US Patent and Trademark Office

<http://www.uspto.gov/index.html>

REGISTRATION ADVANTAGES

- **Constructive notice to the public of the registrant's claim of ownership of the mark;**
- **A legal presumption of the registrant's ownership of the mark and the registrant's exclusive right to use the mark nationwide on or in connection with the goods and/or services listed in the registration;**
- **the ability to bring an action concerning the mark in federal court;**

REGISTRATION ADVANTAGES

- **the use of the U.S registration as a basis to obtain registration in foreign countries; and**
- **the ability to file the U.S. registration with the U.S. Customs Service to prevent importation of infringing foreign goods.**

WHEN YOU CAN USE A TRADEMARK

- When advertising that a product can be used with another product or be another product.
- When writing an article that refers to a product name.
- Market a VERY DISSIMILAR product under a name already used.

Examples:

- Lotus Automobiles/Lotus Software
- Adobe Tiles/Adobe Software

TM, SM, ®

- **TM**

- refers to and unregistered trademark.

- **SM**

- refers to and unregistered service mark.

- **®**

- means that the trademark has been registered with the US Patent and Trademark Office. It can only be used after the registration is approved.

***Cyberspace Law for Non-Lawyers* by Larry Lessig. David Post. and Eugene Volokh**

http://www.eff.org/legal/CyberLaw_Course/

US Patent and Trademark Office Website: *Basic Facts about Trademarks*

<http://www.uspto.gov/web/offices/tac/doc/basic/>

US Copyright Office Website:

<http://www.copyright.gov/>