

Trademark Tidbits

Let's play Jeopardy! Can you question the following answers?

1) ™

2) SM

3) ®

A trademark is defined as a word, name, symbol, logo, or other designation that is distinctive of a person's goods or services and is used to identify that person's goods/services from the competition. In reality, anything that can distinguish your goods or services from the competition is a trademark, including the pink color of fiberglass (Owens Corning), the NBC chimes, and there is even a case before the courts to allow Harley Davidson to register the sound of their motorcycle as a trademark.

If you have a term or logo that is a trademark of your business - you should place a ™ symbol as a superscript, such as Gizmo™. The ™ symbol is a trademark notice, and merely indicates that the user thinks he has a trademark. The ® indicates a registered trademark, and can only be used after a trademark registration is received from the Patent and Trademark Office. The symbol SM designates a service mark, and should be used if the mark specifically designates a service, such as Weight Watchers SM.

The term "trademark" is the broad description, and there are distinct classes within the general category, including service marks (eg: Weight Watchers), certification marks (eg: UL), collective marks (eg: AFL-CIO), house marks (eg: Sony), and trade dress (eg: Hershey's Kiss).

A good trademark can be extremely important and valuable, and can be licensed, transferred, and sold like other assets. The marks for Coca-Cola, McDonald's, IBM and Microsoft represent Billions of dollars of intellectual property assets. It is well worth your effort to consider trademarks a part of your business strategy.

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Recent news demonstrates this value. When Volkswagen bought out Rolls Royce for \$759 million, they did not specifically include trademarks in the deal. Rolls Royce then sold the trademark term "Rolls Royce" to BMW for \$66 million. Of greater significance - trademark infringement costs can be even more painful Super Health Institute v. Super Nu-Life Products, Inc., resulted in a \$20 million verdict for trademark infringement; In Aztar Corporation v. N.Y. Entertainment, the cruise ship M/V Tropicana lost its name because of the Tropicana Casino and Resort.

In order to protect your trademark and prevent others from using it improperly, it is important to understand the underlying principles of trademarks. Trademark law is designed to protect the public from confusion as to the source of the goods and services. If there are similar names on similar products, the consumer may purchase the wrong goods.

The 'likelihood of confusion' analysis takes into account many factors, but in general, if the public can distinguish between two similar trademarks, the two may co-exist, such as Lexus (the automobile) and Lexis (legal research service).

There are several ways to protect your existing trademark. Make sure no one has senior rights to the mark by doing a trademark search. Always place the TM symbol with the mark, and use the trademark as an adjective, such as Xerox copy machine and not just Xerox. Apply for state and or federal trademark protection of the mark and be sure to question any unauthorized usage of similar markets in your field.

As your business grows and the public begins to recognize your mark, the value of the trademark increases. Trademarks can be a valuable component to any business - or can spell disaster if not careful. More information on trademarks can be found at the Patent and Trademark Office website [<http://www.uspto.gov>]
