

# A Guide to Proper Trademark Use

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## I. PRESERVING A TRADEMARK

After you have selected the proper trademark, you have to use it properly to avoid losing or impairing the exclusive rights to the trademark. Many famous marks have lost their trademark status, e.g., thermos, elevator, yo-yo, nylon, kerosene, corn flakes, dry ice, and linoleum. Therefore, be vigilant. Every time the mark is used, including labeling, advertising and promotional materials, follow this guideline:

### A. USE WITH ITS GENERIC NAME

A trademark is a proper adjective and must be used to modify a noun, at least the first time it appears in a label or advertising. Using it with its generic name will also help prevent it from becoming a generic name itself.

**Right:** I love my McDonald  
hamburger.

**Wrong:** I love my McDonald.

### B. NO POSSESSIVE OR PLURAL

As an adjective, a mark should not be used in the possessive or plural form.

**Right:** Kellogg cornflakes taste  
wonderful.

**Wrong:** Kelloggs cornflakes taste  
wonderful

**Right:** Kodak camera is superb.

**Wrong:** Kodak's camera is superb.

### C. MAKE IT STAND OUT

A mark must stand out from the rest of the text in a manner you have designed. It can be achieved by capitalizing one or more letters of the mark. It can be in a type style that makes it stand out from the rest of the text, for example, in italics or bold face type, or by underlining the mark. Whatever you chose, be consistent and stick to it.

**Right:** IBM

**Wrong:** lbm

#### D. GIVE PROPER NOTICE.

You can give notice in two ways.

##### 1. In a footnote

State in a footnote or the trademark identification page that the mark is your trademark.

If your trademark has not been registered, use:

*Microsoft Windows is trademark of*

If your trademark has been registered, use:

*Windows is a registered trademark of Microsoft*

##### 2. Use trademark symbols.

###### a). How?

Place the trademark symbol right next to the trademark.

For unregistered marks:™

For registered marks: ®

###### b). Where?

Use the trademark symbol at least the first time the trademark appears in an article.

In some foreign countries it is against the law to use the ® symbol when you do not have a corresponding registration in those countries. Therefore, when marketing your goods or services in those countries in which you do NOT have a registration you should provide an alternative notice of your registered U.S. trademark rights.

One such alternative form of trademark notice is to place an asterisk (\*) next to the mark instead of using the ® symbol. In a footnote position, place another asterisk, followed by the phrase REGISTERED IN THE U.S. PATENT AND TRADEMARK OFFICE.

## II. RECORD KEEPING

The only requirement to obtaining exclusive right to use a certain name is by actually using it in association with your products. No registration is mandated under law, although registration gives you additional rights that are invaluable. Therefore, the

first date you actually use the name is extremely important in the event of any disputes.

Therefore, save the invoice or any dated evidence of the first use of your mark in intrastate and interstate commerce and provide us with a photocopy if you have not already done so. You should also save records of all your advertisements, trade shows promotions, and press clippings where your mark is being used and good accounting of how much you spend on such advertisements and promotions

### III. USING OTHER COMPANY'S MARKS

If you use a mark that belongs to others but are not adopting the mark as your own, you need to follow their style of depicting their marks. If it is likely to cause confusion, mistake or deception, or to be deemed as passing off on their goodwill, you also need to indicate the ownership of that mark in a footnote or in your trademark identification page.

E.g.: Xerox is a registered trademark of Xerox Corporation.

Otherwise, add this sentence to your trademark ownership page, if any:

*"Other product names mentioned herein are used for identification purposes only and may be trademarks of their respective companies."*

### IV. OTHERS USING YOUR MARKS

You should not permit anyone else from using your trademarks to identify their products without written agreement with you. This applies to your authorized dealers and distributors as well. However, the public, including your dealers and distributors can use your trademarks to refer to your products, provided that it is unlikely to cause confusion, mistake, or deception, or pass off or your good will.

### V. TRADEMARK v. TRADE NAME

Trade name or a corporate name is used to identify a company, not a product. However, the same word or symbol can be both a trademark and a trade name. When used as a trademark, follow the trademark guideline given to you in this paper. When used as a corporate name, the trademark guideline should not be followed; instead, develop your own corporate identity guideline for the use of the trade name. This corporate identity guideline should prohibit any dealer from using your trade name without indicating their relationship with you e.g., a statement that they are an *"Authorized Dealer"* right next to the trade name or logo.