

A Guide To Proper Trademark Use

For Media, Internet And Publishing Professionals



PowerfulNetworkPowerfulBrands.

What is a Trademark?

A trademark is any word, name, symbol or device (or any combination thereof) that identifies and distinguishes the source of the goods of one party from those of others. Similarly, a service mark is any word, name, symbol or device (or any combination thereof) that identifies and distinguishes the services of one party from those of others.

Trademarks and service marks (“mark” or “marks”) are important and valuable assets for both businesses and consumers. A distinctive mark allows a business to build public goodwill and brand reputation in the goods or services it sells. Marks also help consumers identify the source of goods and services and make informed choices based on their experiences.

Trade names are not the same as trademarks or service marks. Although many companies use trade names as their marks, trade names are corporate or business names.

The International Trademark Association (INTA) has developed this guide to provide you with a few easy-to-follow rules concerning proper mark use. When referring to a mark, make sure you pass the “ACID” test of proper use:

- A** djective
- C** onsistent
- I** dentification or Status
- D** istinctive

A adjective

Trademarks and service marks are proper **adjectives**. Not nouns. Not verbs. A mark should always be used as an adjective qualifying a generic noun that defines the product or service. A mark is a company brand name, not a product or service itself. As **adjectives**, marks should not be used as plurals or in the possessive form, unless the mark itself is plural or possessive (such as 1-800-FLOWERS, MCDONALD'S or LEVI'S).

Examples

Correct:

Use a XEROX brand copier
Please hand me a KLEENEX tissue

Incorrect:

XEROX these copies
a five-KLEENEX movie

Correct:

Send the packages via FEDEX courier
Send the packages via EXPRESS MAIL service
I had four STARBUCKS lattes
Put on your RAY-BAN sunglasses

Incorrect:

Send the FEDEXs
Send it EXPRESS MAIL
I drank four STARBUCKS
Put on your RAY-BANS

Are these important distinctions? Yes. Think of the following: Aspirin. Elevator. Kerosene. Corn Flakes. Yo-Yo.

Each of these well-known product names was once a famous trademark with rights exclusively

owned by a company. Today, due to misuse of the marks, they are merely generic product names in some jurisdictions with no accompanying trademark/service mark rights. These “ghost-marks” serve as historic and costly reminders of what can happen to marks if the public comes to regard a brand name as the generic name of a product.

In this context, please note another important distinction trade names are proper nouns, not adjectives. Consequently, trade names can be used in the possessive form (for example, “Reebok’s newest line of athletic shoes is for children”) and need not be followed by generic nouns that define a product or service (for example, “These athletic shoes are made by Reebok”).

Consistent

Businesses use many styles to represent their marks. Thus, it is important that your references to a particular mark are accurate and consistent, i.e., the mark should be represented the same way each time. For example, if a mark is represented in all capital letters, you should consistently use all capital letters when referencing that mark. This has the desired effect of emphasizing that the term is indeed a trademark or service mark, not merely another word in the text.

I Identification or Status

To consistently identify trademarks and service marks, a (mostly) international system of demarcation or trademark notices has been established.

In most countries, the TM symbol is recognized as identifying an unregistered trademark. The SM symbol is used to identify an unregistered service mark (a mark used in connection with a company's services rather than with goods). Although these symbols have no legal significance, their use does have the preventative effect of indicating possible claims to trademark rights in the designations with which they are used.

Most countries have also adopted the ® symbol to identify a registered trademark or service mark. Other proper forms of notice for registered trademarks in the U.S. include: "Registered in the U.S. Patent and Trademark Office" and "Reg. U.S. Pat. & Tm. Off." Certain countries have other symbols and designations, including "Marca Registrada" or "MR" in some countries where Spanish is the dominant language, and "Marque Déposée," "Marque de Commerce," or their abbreviations, "MD" and "MC," in some countries where French is the dominant language. Demarcation practices vary from country to country and, logically, marking should be in the local language(s) or otherwise meaningful to your readers and/or the people in the country in which the products or services are advertised and sold.

Generally, demarcation is not necessary for every occurrence of a trademark or service mark in an article, press release, advertisement or on a website, etc; however, at a minimum, this identification should occur at least once in each piece, either the first time the mark is used or with the most prominent use of the mark. When in doubt, err on the side of “over-marking.”

TM

SM

® SM

®

Distinctive

Trademarks and service marks should be displayed in a different font or manner to distinguish them from surrounding text. In running text, for example, trademarks are often distinguished by using all capital letters or italics. In addition, the generic noun that identifies the product or service should be used immediately after the trademark name at least once in each separate written or broadcast communication, or on each website, preferably the first time that the trademark appears in the material. Additional emphasis can be given to trademarks by using the word “brand” after the mark or by using one of the acceptable symbols that indicate trademark status, as mentioned in the “Identification” section above.

Examples:

KLEENEX tissues

Canon® cameras

Scotch brand transparent tape

Callaway golf clubs

About INTA

5,700 trademark owners, professionals and academics from more than 190 countries make INTA a powerful network of powerful brands. Members of INTA find true value in the Association's global trademark research, policy development, and education and training.

INTA Resources

Available online, free of charge.

Fact Sheets—get quick, clear answers to your questions about trademarks.

Presentations—learn about trademark basics or explain them to your staff, colleagues or others.

Glossary—access terms and definitions often used when talking about trademarks.

Visit www.inta.org/trademarkbasics.

Contact

If you have any questions regarding proper trademark use, you can contact INTA for assistance at +1-212-642-1700.

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