

Trademark Usage Guidelines

If a trademark or service mark is not used properly and consistently, the rights in the mark can be weakened and possibly lost. Usually, this is not a problem in the most common and prominent uses of a trademark, such as the appearance of a mark on the front label of a product. Instead, improper use typically happens in off-label situations, such as when trademarks or service marks appear in a textual discussion of the product or service in issue on websites or in advertising, promotional or informational materials.

By following these guidelines you should ensure proper and consistent use of marks.

1. Trademarks should appear prominently on product labels or point-of-sale displays; service marks should appear prominently in advertisements promoting the service. In most instances, the only “use” of a trademark that will create protectable rights is a use of the mark on actual products that are currently being sold, the packaging or labeling of such products, point-of-sale displays where such products are available for purchase, or in printed instructions on product use that are included in product packaging for such products.

Because services are intangible and the associated mark cannot be “attached” to them physically, the only “use” of a service mark that create protectable rights is a use in advertising or promotional materials or signage uses at the location where the services are being rendered. Use on websites promoting the service or print advertisements in trade publications are ideal evidence of use of service marks. Materials used in direct, face-to-face customer interactions (e.g. business cards or sell sheets) will typically NOT work as evidence of use of a service mark.

Before picking and using a new mark, if you want to be able to protect and enforce the mark, always confirm with legal counsel that you will be using it in a fashion that will create protectable rights. Also, you must keep using your marks to keep your rights in those marks alive; once you stop using them in the ordinary course of your business, the rights may be lost. It is recommended that you archive examples of use of your marks on at least an annual basis.

2. Use your marks consistently; when reproducing a trademark that is a logo, design, or stylized word, reproduce the trademark exactly as registered. Any material change in a mark may weaken or otherwise threaten your rights in that mark. Always reproduce the mark as accurately as possible. If you have any doubt about how the mark should appear, check with legal counsel. Do NOT omit or alter any element of a word mark or a logo, stylized or design mark. Do not shorten, abbreviate or create acronyms out of marks unless you also intend to create a new, shorter mark. If marketing or other business needs require the mark be changed in some way, check with legal counsel before making the change.

3. Make the mark stand out. When using marks in textual or graphic material, such as on websites, tweets, or in product literature, advertising (traditional or social media) or other promotional or informational material, the marks should be made to stand out from the surrounding text where practicable. To do this, use **bold face printing, underling, italics, “quotation marks” or all CAPITAL letters.** Using all CAPITAL letters is the preferred method to make marks stand out from other text in product literature, etc. However, use of one of the

other methods is preferred when the mark has a unique capitalization pattern that might make the use of all caps inconsistent with the mark as claimed, such as “SkyBEAM.”

4. Marks should always function grammatically as adjectives, never as nouns or verbs.

Marks serve as identifiers of the source of the particular product or service with which they are used – marks allow purchasers to distinguish your goods and services from those of others. Many terms that are in common use today as a noun to identify or describe a type of product started off as trademarks but lost their ability to be a source identifier due to improper use. Some examples are: “aspirin,” “yo-yo” and “zipper.” In each case, the term was used in such a way as it came to identify the product itself rather than the source.

To ensure that a mark retains its ability to identify the source, when a mark appears in textual materials such as websites or promotional/informational material, the first use and the most prominent use of the mark should always be followed by a common industry term that describes the product under which the product is sold: “we recommend you use RUST-OLEUM® LEAKSEAL® flexible rubber coating” or “try TREMCO® POWERply® sheeting.” This ensures that the mark functions properly as an adjective that modifies a noun that describes the type of product or service being sold. In documents or other material where the same mark appears many times, you do not need to follow this guideline each time the mark appears, as long as the first and most prominent uses are proper. However, where a document runs many pages, it is helpful to periodically re-establish the proper use.

Because marks function as adjectives and using them as nouns or verbs threatens their status as marks, resist the temptation to: (a) pluralize marks that are claimed in a singular form, (b) use a mark in possessive form, or (c) turn a mark into an “action” word.

5. Use the proper trademark symbol. It is recommended that when you use marks on product labels and in advertisements that the mark be accompanied by the proper trademark symbol. Using a trademark symbol puts the public (and your competitors) on notice that you are claiming rights in the mark. This helps protect the mark and it may deter others from infringing the mark. It is also another way of making the mark stand out when it is used in textual material (as opposed to on the product label). When in doubt as to which trademark symbol to use with a particular mark, default to the standard symbols: TM for trademarks and SM for service marks.

There is specific required location for a trademark symbol. The standard placement for trademark symbols for word marks is at the end of the mark and the standard font is superscript. For all other marks, it is essential only that the symbol be closely adjacent to the mark or incorporated into the mark.

When a mark is registered with the U.S. Trademark Office, it may be appropriate to use the registered mark symbol, “[®]”, in place of a TM or SM. For goods that circulate primarily in North America, there are some specific guidelines for use of the registration symbol that you need to follow.

- Use the registered mark symbol, “[®]” if and only if the following conditions are met:
 - (i) a registration for the exact mark has actually been issued,

(ii) the mark is being used on or in connection with one or more of the exact products listed in the registration certificate, AND

(iii) the registration is still in effect.

- If all the above-mentioned conditions are not met, use the “™” symbol for trademarks or “℠” symbol for service marks.
- For goods that primarily or to a significant degree circulate in places other than North America, please consult with legal counsel on when it is appropriate to use the registered mark symbol.
- Must trademark symbols be used each and every time a mark appears? In documents or other material where the same mark appears many times, it is not essential that the proper symbol be used each and every time the mark appears. In such situations, use the proper symbol where the mark makes its first and most prominent appearances. On product labels, always use the appropriate symbol with the most prominent appearance of the mark on the label.

6. Do not use trademark symbols with the names of business units or domain names.

The same term is sometimes used as both a mark and as (or in) the name of a business or a domain name. Unlike marks, which function grammatically as adjectives that identify specific goods and services, business names function as nouns that identify a business as a whole. It is never appropriate to incorporate trademark symbols when advertising a domain name (Carboline®.com). Nor should you include trademark symbols when identifying a business (Day-Glo® Color Corp.) The only time it is appropriate to use a trademark symbol with a business name is on the rare occasion when the full business name is itself registered as a mark (The Euclid Chemical Company®) and the term is being used as a mark rather than as a reference to the business. Even if the name is also a mark, if it is being presented as a name instead of mark, do not use a trademark symbol. The simplest way to distinguish between use of a term as a mark and as a business name when the term appears in text is to substitute the words “the company” for the term – if the sentence still makes sense, the term is being used to describe the business itself, not a particular product or service offered by the business. Another good indicator that a term is being used as business name instead of a mark is when the company’s address is included directly adjacent to or below the occurrence of the name.