

**UNITED STATES
PATENT AND TRADEMARK OFFICE**



Basic Facts About Trademarks: What Every Small Business Should Know Now, Not Later

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Attorney Advisor for Trademark Educational Outreach

UNITED STATES
PATENT AND TRADEMARK OFFICE



BUSINESS PLAN?

**TRADEMARK COMPONENT
OF YOUR
BUSINESS PLAN?**

Discussion Topics

1. What is a trademark?

Discussion Topics

1. What is a trademark?
2. Benefits of federal registration

Discussion Topics




















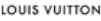











1. What is a trademark?
2. Benefits of federal registration
3. Selecting a trademark

Discussion Topics

1. What is a trademark?
2. Benefits of federal registration
3. Selecting a trademark
4. How to find help

WHAT IS A TRADEMARK?

Rankings

<p>01</p>  <p>+21% 118,863 \$m</p>	<p>02</p>  <p>+15% 107,439 \$m</p>	<p>03</p>  <p>+3% 81,563 \$m</p>	<p>04</p>  <p>-8% 72,244 \$m</p>	<p>05</p>  <p>+3% 61,154 \$m</p>	<p>06</p>  <p>-3% 45,480 \$m</p>	<p>07</p>  <p>+15% 45,462 \$m</p>	<p>08</p>  <p>+20% 42,392 \$m</p>
<p>09</p>  <p>+1% 42,254 \$m</p>	<p>10</p>  <p>Mercedes-Benz</p> <p>+8% 34,338 \$m</p>	<p>11</p>  <p>+7% 34,214 \$m</p>	<p>12</p>  <p>-8% 34,153 \$m</p>	<p>13</p>  <p>+14% 32,223 \$m</p>	<p>14</p>  <p>+6% 30,936 \$m</p>	<p>15</p>  <p>amazon</p> <p>+25% 29,478 \$m</p> 	
<p>16</p>  <p>+8% 25,980 \$m</p>	<p>17</p>  <p>-8% 23,758 \$m</p>	<p>18</p>  <p>-9% 22,845 \$m</p>	<p>19</p>  <p>-9% 22,552 \$m</p>	<p>20</p>  <p>+17% 21,673 \$m</p>	<p>21</p>  <p>+16% 21,083 \$m</p>	<p>22</p>  <p>+16% 19,875 \$m</p>	
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Trademark Definition

Any word, slogan, symbol, design, or combination of these

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Any word, slogan, symbol, design, or combination of these that:

- 1. Identifies the source of your goods and services**

and

Trademark Definition

Any word, slogan, symbol, design, or combination of these that:

- 1. Identifies the source of your goods and services**

and

- 2. Distinguishes them from the goods and services of another party**

Trademark Definition

Any word, slogan, symbol, design, or combination of these

Can also be a **sound**,
color, or
smell

Trademark Examples

Sound

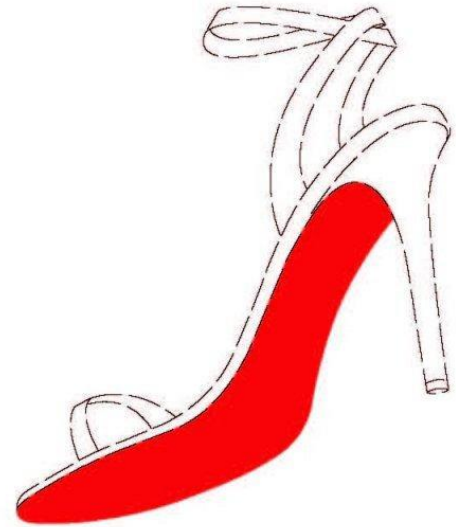
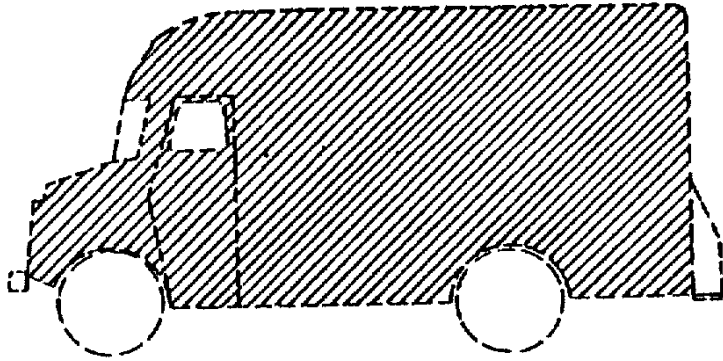
**THE MARK COMPRISES
THE MUSICAL NOTES
G, E, C PLAYED ON
CHIMES**

Smell

**Toothbrushes impregnated with
the scent of strawberries**

Trademark Examples

Color



Types of Trademarks

Word Mark

COCA-COLA

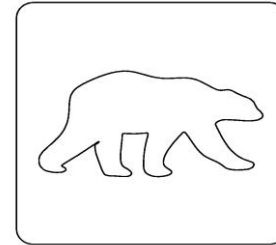
Special Form Mark

Coca-Cola

Composite Mark



Design Mark



TRADEMARK, PATENT, OR COPYRIGHT

Trademark

Brand for goods and services

Trademark

Brand for goods and services

Patent

Protects inventions

Trademark

Brand for goods and services

Patent

Protects inventions

Copyright

???

Copyright

Protection for original artistic works

Occurs when an idea is affixed in a tangible medium

Copyright

Songs

Movies

Books

TV Shows

Choreography

Sculptures

Plays

Paintings

Photographs

Architecture



Patent



Copyright



Trademark

Trademark

Can last indefinitely

Patent

Utility: 20 years

Design: 15 years

Copyright

Life of the author plus 70 years

DOMAIN NAME OR BUSINESS NAME

Domain Name

Web address for finding a site on the Internet

Domain Name

Web address for finding a site on the Internet

Examples:

USPTO.GOV

COPYRIGHT.GOV

Domain Name



TMARKEY.COM

Amazon.com [Sign in](#) to get personalized recommendations. New customer? [Start here](#). [Wishlist](#) [See what's new](#) [Week 5 Ultimate Backyard Theater](#) [Learn more](#)

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Business Name

Name under which you do business in a particular state

DOMAIN NAME \neq TRADEMARK REGISTRATION

BUSINESS NAME \neq TRADEMARK REGISTRATION

Trademark

Brand for goods and services

Patent

Protects inventions

Copyright

Protects original artistic works

Domain Name

Web address

Business Name

Entity name under which you do business

Trademark

www.uspto.gov

Patent

www.uspto.gov

Copyright

www.copyright.gov

Domain Name

www.internic.net

Business Name

your state's Secretary of State website



BENEFITS OF FEDERAL REGISTRATION

Common Law Trademark

Trademark that is used in commerce in connection with specified goods and services

Rights are limited to a particular geographic area

Federally Registered Trademark

Trademark that is used in commerce in connection with specified goods and services **and** is registered with the USPTO

Rights are granted throughout the United States and its territories

Federally Registered Trademark

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7. Use registration as a basis for foreign filing
8. Able to use the federal registration symbol: ®

SELECTING A TRADEMARK

Trademark Selection Challenges

Not every trademark registers

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Not every trademark registers

Even if the mark registers, it may not be enforceable

Likelihood of Confusion

Likelihood of confusion between
the **mark in your application** and
a **mark registered to another party**

Likelihood of Confusion

Two prong test:

- 1. Marks are similar**

and

- 2. Goods and services are related**

Likelihood of Confusion

Two prong test:

1. Marks are similar

Look alike; Sound alike; Have similar meanings;
Create similar commercial impressions

and

2. Goods and services are related

Likelihood of Confusion

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Create similar commercial impressions

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2. Goods and services are related

Consumers mistakenly believe the goods and
services come from the same source

Likelihood of Confusion

X-SEED for “agricultural seeds”

EXCEED for “live plants”

Trademark Clearance Search

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1. Trademark Electronic Search System (TESS)

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1. Trademark Electronic Search System (TESS)
2. State trademark databases
3. Internet search

Additional Search Assistance

1. Hire a trademark attorney

Additional Search Assistance

1. Hire a trademark attorney
2. Trademark Information Network (TMIN)
on [USPTO.GOV](https://www.uspto.gov)

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Strength of Mark

Determines **registrability** and **protectability**

Strength of Mark

STRONG

**FANCIFUL/
ARBITRARY**

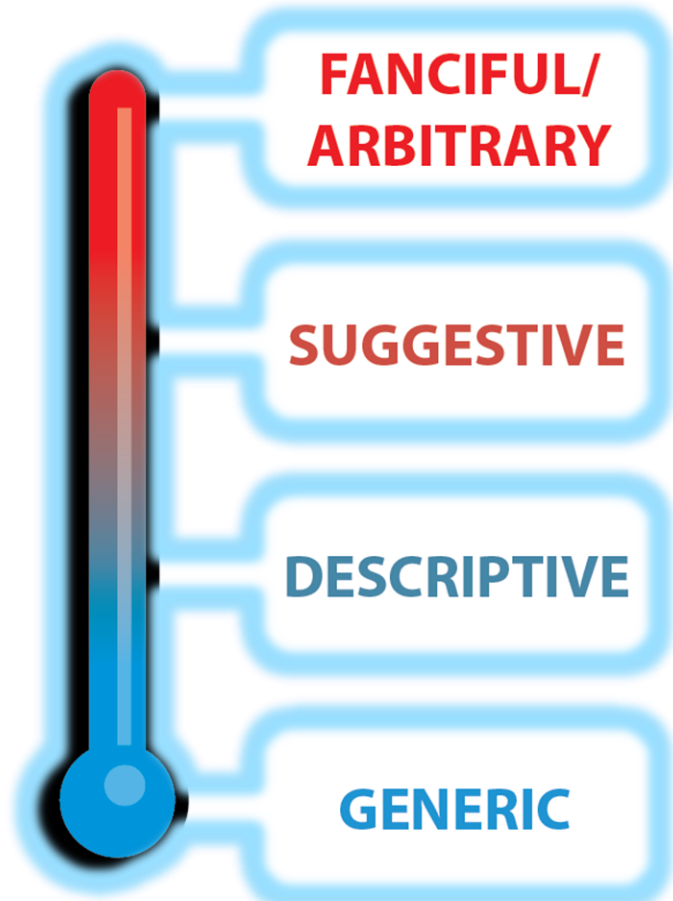
SUGGESTIVE

DESCRIPTIVE

WEAK

GENERIC

uspto



Generic Terms

Common, everyday names for goods and services

Examples:

BICYCLE for "bicycles"

MILK for "a dairy-based beverage"

Descriptive Marks

Directly describe something about the goods and services

Examples:

CREAMY for "yogurt"

THE ULTIMATE BIKE RACK for "a bike rack"

Suggestive Marks

Suggest quality of the goods and services

Examples:

QUICK 'N NEAT for "pie crust"

GLANCE-A-DAY for "calendars"

Fanciful Marks and Arbitrary Marks

Inherently distinctive

Fanciful Marks

Invented words



Arbitrary Marks

Actual words, but no association with the goods and services

Apple®



 **BlackBerry**

Marketing

Descriptive = Hard to protect

Marketing

Descriptive = Hard to protect

Fanciful/Arbitrary = Easier to protect

“Genericized” Marks

Trademarks that have lost their trademark significance

Examples:

ZIPPER

ESCALATOR

YO-YO

Policing Your Mark

Ensure that consumers use it properly



Trademark Selection Considerations

1. Likelihood of confusion
2. Strength of mark

Trademark Selection Considerations

1. Likelihood of confusion
2. Strength of mark
3. Surname
4. Geographically descriptive
5. Deceptive, disparaging, or offensive
6. Misspelling of descriptive/generic wording
7. Name or likeness
8. Title of a single book or movie
9. Ornamental/Descriptive matter

HOW TO FIND HELP

USPTO Resources

1. USPTO.GOV

USPTO Resources

1. USPTO.GOV
2. Basic Facts About Trademarks booklet
3. Basic Facts About Trademarks videos
4. Trademark Information Network (TMIN)
5. TEAS Nuts and Bolts videos

USPTO Contact

Trademark Assistance Center

Phone: **1-800-786-9199**

E-mail: **TrademarkAssistanceCenter@uspto.gov**



USPTO Restrictions

The USPTO does not:

1. Provide legal advice
2. Enforce trademark rights

Advantages of Hiring an Attorney

1. Obtain or conduct a pre-application clearance search

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5. Advise you on the best way to police and enforce your rights

Other Sources of Assistance

1. Free and reduced-price legal services

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3. SCORE program

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5. Free information on USPTO.GOV

Finding an Attorney

1. Check local telephone listings
2. Search on-line
3. Check with local or state attorney bar associations

WRAP UP

Five Things to Remember

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4. Hiring a trademark attorney is recommended
5. Your trademark is the face of your business

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QUESTIONS?

