

# Trademark

Trademarks protection is available for certain names, symbols, devices, or words that will be used in connection with a good or service. Technically, if a certain mark is associated with a service, it is called a "service mark," but trademark is commonly used to refer to both marks associated with services and goods. The purpose behind trademarks is to allow companies and individuals to indicate the source of their goods or services and to distinguish them from others in the industry.

## What Do Trademarks Do?

A trademark not only gives the trademark owner the exclusive right to use the mark but also allows the owner to prevent others from using a similar mark that can be confusing for the general public. A trademark cannot, however, prevent another person or company from making or selling the same goods or service under a clearly different mark. Rights to a mark can be established through the legitimate use of the mark in a commercial or business setting. Registration with the U.S. Patent and Trademark Office (USPTO) is not required but offers additional protections.

When a person claims the rights to a particular mark, he or she is allowed to use "TM" (for a trademark) and "SM" (for a service mark) to designate that the mark is trademarked. The symbol "®" designates federal registration and can therefore only be used after the USPTO registers the mark, meaning the symbol cannot be used when an application is pending. In addition, the ® symbol may only be used with goods and/or services that were listed in the federal trademark application.

## Registering a Trademark

As previously stated, a person can hold rights to a mark without registering it with the USPTO, but registration does have certain advantages. For example, federal registration of a mark gives rise to the legal presumption that the registrant is in fact the trademark owner. Federal registration also allows a trademark owner/registrant the ability to file a lawsuit related to the mark in the federal court system.

If you are interested in registering your trademark, you can easily do so online with the USPTO's Trademark Electronic Application System (TEAS). Generally speaking, an application for a trademark will need to include:

The applicant's name;

A name and address for correspondence between the applicant and the USPTO;

A depiction or drawing of the mark;

A list of the goods and/or services that will be associated with the mark; and

Filing fee(s).

Some applicants also may be required to submit a specimen of use, which is basically a real-world example of the mark. Any application that fails to include all of the required elements will be returned to the applicant, along with a refund of the filing fee.