

Trademark 101

Patents, Copyrights and Trademarks. Some people confuse patents, copyrights, and trademarks. Although there may be some similarities among these kinds of intellectual property protection, they are different and serve different purposes. Patents protect inventions and improvements to existing inventions. Copyrights cover literary, artistic, and musical works. Trademarks are brand names and/or designs which are applied to products or used in connection with services.

Trademarks. A trademark includes any word, name, symbol, or device, or any combination, used, or intended to be used, in commerce to identify and distinguish the goods or services of one manufacturer, seller or provider from goods or services manufactured, sold or provided by others, and to indicate the source of the goods or services. In short, a trademark is a brand name. Trademark rights may be used to prevent others from using a confusingly similar mark, but not to prevent others from making the same goods or from selling the same goods or services under a clearly different mark.

Registering Your Trademark. Federal registration is not required to establish rights in a trademark. Common law rights arise from actual use of a mark. Generally, the first to either use a mark in commerce or file an intent-to-use application with the Patent and Trademark Office has the ultimate right to use and registration. However, there are many [benefits of federal trademark registration](#), such as the exclusive right to use the mark on or in connection with the goods or services set forth in the registration. To get a U.S. trademark, an application must be filed in the U.S. Patent and Trademark Office.

Benefits of Federal Trademark Registration.

1. Constructive notice nationwide of the trademark owner's claim.
2. Evidence of ownership of the trademark.
3. Jurisdiction of federal courts may be invoked.
4. Registration can be used as a basis for obtaining registration in foreign countries.
5. Registration may be filed with U.S. Customs Service to prevent importation of infringing foreign goods.

Use of the TM or SM Symbols. Use of the symbols "TM" or "SM" (for trademark and service mark, respectively) usually indicate that a party claims rights in the mark and are often used before a federal registration is issued.

Proper Use of the Federal Registration Symbol ®. The federal registration symbol may be used once the mark is actually registered in the U.S. Patent and Trademark Office. Even though an application is pending, the registration symbol may not be used before the mark has actually become registered. The federal registration symbol should only be used on goods or services that are the subject of the federal trademark registration.

Date of First Use of Mark Anywhere. The date on which the applicant first used the mark in commerce anywhere. Please note this date may be earlier than, or the same as, the date of the first use of the mark in commerce date.

Date of First Use in Interstate Commerce. For goods, "interstate commerce" involves sending the goods across state lines with the mark displayed on the goods or the packaging for the goods. With services, "interstate commerce" involves offering a service to those in another state or rendering a service which affects interstate commerce (e.g. restaurants, gas stations, hotels, etc.).

Specimens. A specimen is a real-world example of how the mark is actually used on the goods or in the offer of services. Labels, tags, or containers for the goods are considered to be acceptable specimens of use for a trademark. For a service mark, specimens may be advertising such as magazine advertisements or brochures. Actual specimens, rather than facsimiles, are preferred. However, if the actual specimens are bulky, or larger than 8½" x 11", then the applicant must submit facsimiles, (e.g., photographs or good photocopies) of the specimens. Facsimiles may not exceed 8½" x 11". **ONE SPECIMEN IS REQUIRED FOR EACH CLASS OF GOODS OR SERVICES SPECIFIED IN THE APPLICATION.**

Drawings. The "drawing" is a page which depicts the mark the applicant seeks to register. The drawing must be submitted in either .gif or .jpg format containing a black-and-white representation of the design. Color and grayscale drawings are not accepted by the Trademark Office. In an application based on actual use, the drawing must show the mark as it is actually used, i.e., as shown by the specimens. In the case of an application based on a bona fide intention to use, the drawing must show the mark as the applicant intends to use it. The applicant cannot register more than one mark in a single application. Therefore, the drawing must display only one mark.

Classes of Goods/Services.

Class 1 (Chemicals).....	Class 24 (Fabrics).....	Goods
Class 2 (Paints)	Class 25 (Clothing)	
Class 3 (Cosmetics and cleaning preparations)	Class 26 (Fancy goods)	
Class 4 (Lubricants and fuels)	Class 27 (Floor coverings)	
Class 5 (Pharmaceuticals)	Class 28 (Toys and sporting goods)	
Class 6 (Metal goods)	Class 29 (Meats and processed foods)	
Class 7 (Machinery)	Class 30 (Staple foods)	
Class 8 (Hand tools)	Class 31 (Natural agricultural products)	
Class 9 (Electrical and scientific apparatus)	Class 32 (Light beverages)	
Class 10 (Medical apparatus)	Class 33 (Wine and spirits)	
Class 11 (Environmental control apparatus)	Class 34 (Smokers' articles)	
Class 12 (Vehicles)	Class 35 (Advertising and business).....	Services
Class 13 (Firearms)	Class 36 (Insurance and financial)	
Class 14 (Jewelry)	Class 37 (Building construction and repair)	
Class 15 (Musical instruments)	Class 38 (Telecommunications)	
Class 16 (Paper goods and printed matter)	Class 39 (Transportation and storage)	
Class 17 (Rubber goods)	Class 40 (Treatment of materials)	
Class 18 (Leather goods)	Class 41 (Education and entertainment)	
Class 19 (Nonmetallic building materials)	Class 42 (Scientific & technological)	
Class 20 (Furniture & arts. not otherwise classified)	Class 43 (Restaurant & hotel)	
Class 21 (Housewares and glass)	Class 44 (Medical)	
Class 22 (Cordage and fibers)	Class 45 (Personal & social)	
Class 23 (Yarns and threads)		

Useful Trademark Links. U.S. Patent and Trademark Office www.uspto.gov