

## What is a Trademark?

A trademark is a word, phrase, symbol, design, (or any combination thereof) used by a company in order to distinguish that company's goods or services from the goods and services of others. Trademarks act as identifiers of source and represent the goodwill of the company.

Trademarks are important because they protect the owner of the trademark and the public from unfair competition that could result from somebody else's deceptive behavior. Trademarks may be registered with the U.S. Patent and Trademark Office. Examples of some famous trademarks are COKE, REEBOK, the shape of the PERRIER bottle, the NBC chimes, and the color pink of OWENS CORNING insulation.

The word "trademark" is generally used to describe trademarks and service marks, although there are some distinctions. A "mark" is a trademark, but simply in shortened form. A service mark is generally the same as a trademark, except that it distinguishes the *services* of one company from another, rather than distinguishing the goods. A typical service mark is the name of a restaurant, like MCDONALD'S or HERTZ for car rental services.

Trade dress is a form of trademark and can refer to both the appearance of product and its packaging. Trade Dress may include certain features of the product and packaging, such as shape, color, size, texture and graphics, or any combination of these. If the trade dress is distinctive (that is, it indicates the source of the good or service), and it is not functional (is not necessary for others to use to compete) then it can be protected under trademark law.

### Trademark Strength

The scope of protection that is given to a trademark is directly related to its strength. Strength depends upon a trademark's distinctiveness, or its ability to identify the goods or services sold under the mark as coming from a particular source. The following represents the different levels of distinctiveness, as viewed by courts:

1. **Arbitrary and distinctive:** these are the strongest marks, and are entitled to the highest degree of protection. Arbitrary marks have no meaning other than as an identifier of goods or services. They do not naturally suggest the product or any of its characteristics.

Examples: EXXON for gasoline; KODAK for film; XEROX for photocopiers

Distinctive marks are actual words that have a meaning outside the context of the product or service they identify. APPLE for computers; PALM for computer software are classic examples of distinctive marks.

2. **Suggestive:** not quite as strong as arbitrary marks, these marks indicate or suggest something about the good or service.

Examples: STRONGHOLD for nails, SPRINT for long distance telecommunications

3. **Descriptive:** these are terms that immediately describe something about the good or service. These marks are only protectable through use over a period of time.

Examples: WOODWORKER'S SUPPLY for a woodworking store, PARK N' FLY for airport parking

4. **Generic:** these terms cannot be protected. They serve as the common name for the good or service.

Examples: supermarket, in-line skate, bandage