

TRADEMARKS & PATENTS: A PRIMER

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You have a new business, a new idea or an awesome invention, and now what? How do you make sure you can protect what you have? How can you set yourself apart from your competitors (who also have a new business, a new idea and an awesome invention)? This paper provides a very brief summary of Trademarks and Patents; what they are and how you can protect them. Call Gary at 952.953.8837 for more information.

How to Choose a Trademark. Choose something unique. Here are examples of some trademarks, from the very weak trademarks to very strong trademarks:

Weak		Strong	
Not Protectable		Very Protectable	
Generic	Descriptive	Suggestive	Fanciful/Arbitrary
Aspirin	Frosted Mini Wheats [®]	7-Eleven [®]	Kodak [®]

The strongest trademarks are those that you make up. Almost as strong are those that suggest a characteristic of your company or product or service (NIKE[®] Shoes is a good example, Nike, in Greek, means victory).

How to Use a Trademark.

- Set it apart from surrounding text. Use a different font, or capitalize it whenever it is used.
- Mark your trademark with a “TM” if it relates to a product or an “SM” if it relates to a service rather than a product. If you obtain a registration from the United States Patent and Trademark Office, you can mark it with an ® (just be sure not to use the ® without a federal registration in hand, that’s not allowed).
- Always use your trademark as an adjective, not as a noun or a verb. You can include the word “brand” after the mark and before the product or service (Coca Cola[®] brand soft drinks) to further guard against non-adjectival use.
- Stick it to your product or service. Make sure you use it on product labels, packaging, and wherever your product or service is mentioned.



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How to Protect your Trademark. Use it properly (see How to Use a Trademark above). Don't allow others to use it in relation to similar goods or services; doing so will weaken or dilute your trademark. Register your trademark with the United States Patent and Trademark Office.

Registering your Trademark. Do you need to register your trademark? No, you need only to use your trademark in interstate commerce to acquire rights to the trademark, but there are advantages in registering your trademark with the United States Patent and Trademark Office. Here are some of the benefits of registering your trademark:

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

What's a Patent? A patent is a promise by the government to protect certain types of inventions or discoveries and to provide the owner of the patent with the exclusive right to make, use, or sell the patented item. A patent can be obtained for an invention or discovery of any new and useful composition of matter, process, manufacture, or machine, or any new and useful improvement of those. Generally, an invention or discovery must be novel, non-obvious, and useful to be patentable. For more information, visit www.uspto.gov.

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