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Trademarks - A trademark includes any word, name, symbol, or device, or any combination thereof adopted and used by a manufacturer of merchandise or service provider to identify his/her goods or services and distinguish them from those manufactured or sold by others. The primary function of a trademark is to indicate origin. However, trademarks also serve to guarantee the quality of the goods bearing the mark and, through advertising, serve to create and maintain a demand for the product. Rights in a trademark are acquired only by use, and the use must ordinarily continue if the rights acquired are to be preserved. Registration of a trademark in the United States Patent and Trademark Office does not in itself create or establish any exclusive rights but is recognition by the government of the right of the owner to use the mark in commerce to distinguish his goods from those of others.

Selecting A Mark - First, always conduct a search to see if your proposed trademark or something similar is already in use. The following identifies the types of trademarks one can select and their relative ease or difficulty in becoming registered.

Arbitrary or Fanciful - Protection available under federal, state, and common law. An arbitrary trademark is a trademark consisting of a word which is used in a way that has nothing to do with its meaning, such as the mark APPLE used with computers. A fanciful trademark is a made up word that only functions as a trademark or service mark. Kleenex® and Coke® did not exist in any language before they were chosen as trademarks for tissues and drinks.

Arbitrary marks, along with fanciful marks, are the strongest type of trademarks (so long as they are not confusingly similar to earlier marks) and are given the broadest form of protection. In fact, because arbitrary and fanciful marks bare no connection to the underlying goods and services, they are inherently distinctive and the owner need not show secondary meaning to be entitled to protection for the mark.

Suggestive - Protection available under federal, state, and common law. A suggestive trademark is a word that, when applied to the products or services, requires imagination, thought, or perception to reach a conclusion regarding the nature of those goods or services. Mustang® for cars is a suggestive trademark because a customer has to use imagination to conclude that the car travels as fast as a horse.

Descriptive - Protection available under federal, state, and common law upon a showing of secondary meaning. A descriptive trademark immediately conveys information regarding an ingredient, quality, characteristic, function, feature, purpose or use of the product or service. While it is tempting to select a descriptive mark because of the ease in recognition of the goods or services provided, they are only protectable if used and advertised over a period of time so that consumers associate the mark with the good or service with which it is used. Examples of trademarks that were judged descriptive and non-enforceable include RAISIN-BRAN and YELLOW PAGES.

Generic - Protection is not available. Generic terms or common words for the products or services cannot function as a trademark because it would prevent others from rightfully using the common name for the product or service that they make. Super Glue, after a costly court battle, was deemed generic when used on a strong, rapid setting glue and not entitled to trademark protection.

Trademark Usage - When adopting a trademark and prior to obtaining a federal trademark registration, one should place a “™” after the mark to let the public know that the particular indicia is considered by its owner to be a trademark. Subsequent to registration, the “™” should be replaced with “®”. However, do not use “®” unless you have a registered trademark as that could be considered fraud.

Proper Trademark Usage

- Do not use the mark as a noun or a verb
 - Correct: Make 6 copies on the XEROX® Copier
 - Incorrect: Xerox that report
- Always use the mark as an adjective, followed by a generic term
 - BAND AID®-brand Bandages
 - KLEENEX® Tissues
 - LIFE SAVERS® Candy
 - PAMPERS® Diapers
- Do not pluralize the mark
 - Correct: Two SANKA decaffeinated coffees
 - Incorrect: Two SANKAS
- Do not use the mark in possessive form, unless the TM is Possessive in nature
 - e.g., McDONALD’S Restaurants
- Do not alter the mark, always use the mark as registered
- Do not split the mark between lines on a page