



## Trademark Protection

*Every day, thousands of well-intentioned people writing letters and copy for sales materials, ads and web sites violate the law.*

### The crime: **trademark infringement**

Most people commit trademark infringement unknowingly through improper use of registered trademarks. The names of companies, brands, individual products, as well as advertising slogans, logos, labels and package designs are eligible for trademark status. Trademark protection encompasses trade names which identify businesses and service marks which identify the source of services.

People incorporating trade names and slogans of successful companies into their everyday conversation would seem like a marketer's dream, but in fact, the process of turning trademarked names into common nouns and verbs can actually make trademark violation impossible to enforce. The Proliferation of buzzwords has a great affinity today; trendy words, hip euphemisms and any clever new names become targets. Sometimes they even succeed in destroying the protected status of those names. This can occur when a trademark owner fails to properly identify service marks or trademarks and is insufficiently vigilant in identifying and notifying violators.

The Xerox Corporation, for instance, has long waged a war of public information campaigns to remind people that Xerox is not to be used as a synonym for the word "photocopy," and should not be used as a verb. You can make a Xerox photocopy but you cannot "Xerox a document."

Trademark and trade name protection is not limited in duration. Protection is enforced as long as a registered name or mark is used. The International Trademark Association asks that writers and business organizations use generic terms opposed to brand names whenever possible. If you must cite trademarked names or copyrighted materials, be sure to properly distinguish them by capitalizing them and, if appropriate, identifying their owners.

The English language is now littered with former trademarked names that lost their protected status through widespread usage as generic terms. The list of now-generic terms include; aspirin, cola, corn flakes, escalator, granola, hoagie, kerosene, nylon, pacemaker, raisin bran, shredded wheat, super-glue, thermos, yo-yo and zipper. Numerous other trademarked names in danger of losing their protected status through common usage are; Cream of Wheat, Crisco, Crock-Pot, Dixie cup, Dumpster, Formica, Jacuzzi, Jell-O, Kleenex, Scotch tape, Thermos, Vaseline, Velcro, Weed Eater and Xerox, just to name a few.

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If you mention a company's trademark in editorial copy you must capitalize it properly, but you are not obligated to use the trademark symbol within the text unless required by a specific contract. However, in advertising materials make sure to include proper trademark attribution in a disclaimer section at the end of the document (i.e. Brand Name is a registered trademark of The Company, Inc.)

To protect your company's federally registered trademarks, be sure to identify them with the "registered" ® symbol. Placing the marks throughout the entire document is unnecessary; placement of one ® symbol alongside the first or most prominent appearance of the trademarked name is sufficient. Use the "TM" or "SM" symbol for a trademark or service mark that isn't federally registered or is registered only within a state. You may not use ® unless your mark is federally registered. "Registered U.S. Patent and Trademark Office," which may be abbreviated "Reg. U.S. Pat. & Tm. Office." notice should be used in advertising and on packaging.

And to protect ourselves and our use of all the trademarked names listed in this article...  
\*All company and product names are trademarks of their respective owners.

### About the Author

Edward Rees is a Partner at The Still and has over 25 years experience as a business owner and President of several companies. Ed has consulted for business in data analysis at the Wharton School, as well as co-authored a patent. He has presented to diverse groups at technology development, medical, and pharmaceutical conferences.

### About The Still

An intellectual property creation, marketing, and media consulting firm, The Still handles all aspects of your company's branding and positioning efforts. The Still provides media metrics analysis, marketing audits, and market research, as well as marketing execution and idea creation. See [http://www.ideaDistillery.com/About\\_The\\_Still.html](http://www.ideaDistillery.com/About_The_Still.html)

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