Overview of Trademark Use

What is a trademark and a service mark?

A trademark is a word, phrase, symbol, or design, or a combination thereof, that identifies and distinguishes the source of the goods of one party from those of others. Prior to registration with the U.S. Patent and Trademark Office ("USPTO"), the owner of a trademark should use the ™ symbol with the trademark with any written use of the mark.

For example, **Bounty**® and **Scott**® are trademarks for paper towel goods. Because both of these trademarks are registered with the USPTO use of the ® is required, however prior to registration the marks would have looked like the following: **Bounty**™ and **Scott**™

A service mark (℠) is the same as a trademark, except that it identifies and distinguishes the source of a service rather than goods. It is more common to use the TM symbol for both trademarks and services marks and therefore either usage is acceptable.

As with the example above, a trademark or service mark doesn't prevent others from producing similar goods or services, just from using a similar mark to identify those goods or services.

When to use the symbol ™ or ®?

It is vital for trademark owners to know when to use the ™ and when to use the ® symbols in connection with the mark and the goods and/or services. As soon as a trademark owner has identified a mark for their goods and/or services, they can use the TM symbol to claim a trademark or service mark. It is not necessary to file paperwork with the State or Federal government in order to use this form of marking. The use of the TM symbol is important because it puts potential competitors on notice that the trademark owner is using the mark as trademark for its goods and/or services. Additionally, use of the TM symbol can offer marketing appeal to consumers because many recognize the TM to symbolize a brand designation rather than a fly-by-night good or service.

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The ® symbol may **only** be used after the U.S. Patent and Trademark Office ("USPTO") has granted Federal registration. This symbol is used for both trademarks and service marks, identifying that the mark is federally protected. It is important to note that this symbol should not be used during the application process, but **only** after a Federal certificate is issued to the trademark or service mark owner. A trademark owner can only gain federal registration of one's mark after the mark has been used in interstate commerce, which can include selling the product or good across state lines or providing services in a different state other than the trademark owner's home state. Offering or selling goods and/or services via the internet, in some cases, may constitute use in interstate commerce.

How to use your ™ or ® with a word trademark or with a logo?

Trademark owners should prominently place the trademark so it is easily noticed by competitors and consumers. If your trademark is going to be in written text it is important to either **bold**, *italicize*, or use UPPERCASE to make the trademark standout from the rest of the written text.

Once the trademark is prominently placed, most place the TM or ® symbol to the upper right of the word, logo, or other mark. However, the placement of the appropriate symbol may work or look better in a different location depending how the mark is being used. Again, the reason to use these symbols appropriately is to put competitors on notice of trademark claim.

Examples of proper use of the TM or ® symbol:

UNH®; **UNH®**; *University of New Hampshire®*;

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How to use your trademark in any written works?

Most word processing programs allow you to insert either the TM or registered symbol under the "insert symbol" function or "special character" function. It is important to always use the TM or registered symbol (if registration has been granted by the USPTO) when using your trademark in any type of written work.

With regards to both advertisements and everyday language, whether it is a publication, poster, business meeting with potential investors or with potential clients, treat your trademark as an adjective and **NOT** a noun. This may sound awkward and take some getting used to; however, it tells others that the adjective you're using is actually your trademark for a good or service and not the actual good or service.

For example: The University of New Hampshire owns the registered trademark UNHCEMS® for software. A proper way to use this mark is as follows: The University of New Hampshire would like to offer the UNHCEMS® software for all your chemical safety and compliance needs; or Have you used the UNH software, UNHCEMS®, to learn about proper compliance standards with regards to chemical disposal?

If your trademark is used improperly over time it can become generic and you risk losing trademark protection. For instance, "escalator" at one time was a trademark for moving stairs; however, because of improper use, the trademark is now considered generic and lost its trademark protection and which is why most people refer to moving stairs as escalators.

Additional Reasons to Use Proper Marking for Your Trademark

- It shows potential consumers and competitors that you put value in your Trademark.
- It may strengthen your marketing efforts by identifying the source of origin of the good or service you are offering.
- It may prevent others from registering the mark for themselves.
- Assist in managing counterfeiting goods.
- Offers future control of domain names and uses of the mark in advertisements.

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Further Questions or Comments?

Please contact the Office for Research Partnerships and Commercialization if you have any additional questions regarding trademarks. Additionally, there is a wealth of information available on the U.S. Patent and Trademark Office website (<http://www.uspto.gov/>). Lastly, if you are considering filing a federal trademark application with the U.S. Patent and Trademark Office and would like the assistance of the Office for Research Partnerships and Commercialization, please fill out our Trademark Disclosure Form (email Gretchen Smith at Gretchen.Smith@unh.edu for a copy of the Trademark Disclosure Form) and submit it to our Office with your introductory communication.

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