

Marking Requirements (Intended for a non-legal audience)

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1. What is trademark marking?

Trademark marking is the use of a commonly accepted symbol (see below) to signify that a word, logo, slogan, design, or other sign functions as a trademark or service mark. Markings can also be used to describe some aspect of the mark (e.g., its ownership or registration status). The markings are typically placed on the upper right corner of the mark, in superscript.

One common example of trademark marking is the use of the ® symbol, which conveys to the public that the mark is registered in the national or regional trademark office of the jurisdiction in which the goods are sold or in which the services are provided.

Other common examples of trademark marking include the use of the “TM” symbol to denote a claim of trademark rights, whether registered or unregistered; the “SM” symbol to denote a service mark (discussed further below); or the notice “Registered Trademark” or its translation into the official language of the jurisdiction (e.g., “Marca Registrada” or “MR” in Spanish speaking jurisdictions, and “Marque Déposée,” “Marque de Commerce,” or their respective abbreviations “MD” and “MC,” in French speaking jurisdictions).

Not all jurisdictions require or provide for the use of the ® symbol or a notice such as “Registered Trademark,” and trademark marking is treated differently in different jurisdictions. Accordingly, trademark owners should approach the subject of packaging or labeling carefully, to accommodate different rules in each jurisdiction where the mark is to be used.

2. What is the purpose of trademark marking?

Marking a trademark may serve several purposes, such as:

- identifying a mark as registered, where an appropriate registration mark is used;

- providing notice of the owner's claim and rights over use of mark;
- distinguishing the mark from surrounding text or graphics;
- distinguishing the mark from another owner's trademark when the two marks appear together on products, packaging, or promotional materials, or in advertising;
- directing the consumer to a notice that identifies the trademark owner, thereby reinforcing the public's association of the mark with the owner; and
- in certain jurisdictions, allowing for potential monetary damages in the event of litigation against a party that is infringing the owner's mark.

3. Can I use the ® symbol in relation to my trademark without obtaining a registration?

The ® symbol indicates that a mark is registered in the trademark office of a particular jurisdiction. In many jurisdictions, it is against the law to use the ® symbol in conjunction with a mark that is not registered. The legal consequences of false or misleading marking may include a fine and/or imprisonment, depending on the jurisdiction.

4. What do the symbols TM and SM mean, and when can I use them?

The TM symbol is the recognized abbreviation for "trademark" and is usually placed on the upper right corner of the mark; for example: ASTEROIDTM athletic wear. In certain jurisdictions, the SM symbol is the recognized abbreviation for the term "service mark." It is used in the same way as TM, but in connection with providing services rather than goods. A service mark is the same as a trademark, except that it identifies and distinguishes the source of a service rather than the source of a product. The words "trademark" and "mark" are commonly used interchangeably to refer to both trademarks and service marks.

If a mark is not registered, the symbols "TM" or "SM" are often used to indicate that even though a mark may not be registered, the owner is nevertheless claiming rights in it. The use of the TM and SM designations informs the public that a word, logo, slogan, design, tagline, etc., is being used as a mark and reflects the owner's intent to claim trademark rights in the mark. However, using one of these symbols does not guarantee that the owner's mark will be

protected under the trademark laws of a particular jurisdiction or that it will not be the subject matter of an infringement by a third party.

4. What if I do not use a marking notice?

Use of the registration symbol or other notice is not mandatory in every jurisdiction (and in some jurisdictions the registration symbol is not legally recognized); however, it is generally advisable to use a marking notice, not only because it provides notice of the owner's trademark rights but also because it may allow the owner to claim certain types of damages in lawsuits against infringers. For instance, in the United States, failure to use a registration notice limits the remedies available to a trademark owner in a lawsuit. Failure to use a registration notice may prevent a plaintiff from recovering damages and profits in a suit for infringement if the defendant is not shown to have had actual notice of the registration.

Marking may also help a trademark owner maintain its rights in the mark by avoiding descriptive use of the mark in advertising and labeling. Such use can lead to the mark becoming generic (and therefore losing legal protection) because of a loss of distinctiveness, such as when consumers use the mark as the name of the category or type of product or service rather than for the specific product or service offered by the trademark owner.

5. Is there any other way that I can appropriately mark a trademark or a service mark?

By using an asterisk (*) or similar symbol to direct the consumer to a footnote indicating that the mark is registered or "is a trademark [service mark] of [company name]."

6. Do I need to include a marking symbol repeatedly when the trademark is used repeatedly in an advertisement?

Generally, it is not necessary to mark every occurrence of a trademark in an advertisement or other promotional materials. However, at a minimum, marking should occur at least once in each advertisement, either the first time the mark is used or with the most prominent use of the mark. When in doubt, err on the side of "overmarking." Remember that, apart from marking, a trademark or service mark should also be properly used (e.g., preferably as an

adjective and distinguished from surrounding text by capitalization, distinct typeface, positioning, color, and/or size).

7. What other marking issues should trademark owners be aware of when doing business internationally?

In general, marking requirements must be examined on a jurisdiction-by-jurisdiction basis.

Consulting with local counsel is always advisable. Some general guidelines are set out below.

- Remember that trademark rights vary from jurisdiction to jurisdiction. Before using a mark or asserting rights in any jurisdiction, take steps to verify those rights in that jurisdiction.
- Marking should conform to any requirements of local trademark law. Logically, marking should be in the local language(s) or otherwise meaningful to the people in the jurisdiction in which the products or services are advertised and sold. Many jurisdictions recognize the use of the ® symbol to indicate a registered mark.
- False or misleading marking with the ® symbol on international packaging can result in unfair competition claims, fines, imprisonment, and other liability. In fact, in certain jurisdictions it is a criminal offense to falsely indicate that a trademark or service mark (or part of one) is registered or protected with regard to certain goods or services when it is not.
- Marking (including footnotes) may be necessary when the mark is imprinted on products or packaging by a licensee, the products are distributed by a party other than the mark owner and the distributor's name appears on the product or packaging, or the marks of more than one owner appear together.

Additional Resources

Country Guides: [Trademark Protection Worldwide](#) ([Membership Required](#))

Searchable database providing essential information on areas of local practice and procedures, including trademark filing, prosecution, registration, and maintenance. Trademark Symbols (Fact Sheet)