

## PROPER TRADEMARK USAGE: HOW TO STAY PROTECTED

**1. Avoiding Genericide.** It is possible for a registered trademark to become generic and lose protection. This generally happens when one company dominates the marketplace to the extent that its trademark brand of a product or service becomes so synonymous with the product or service itself that the public no longer distinguishes between the two. Examples of trademarks that became generic include: Thermos, Cellophane, and Trampoline. Both Xerox and Rollerblade have faced similar problems. This is why you always want to use your trademark as an adjective modifying a noun, such as Nike shoes or Heineken beer. Never use your trademark as a verb: you are not Xeroxing a copy, but using a Xerox brand copier; you're not Rollerblading, but in-line skating with Rollerblade brand in-line skates. Similarly, you never want to use your trademark as a noun. For example, ride the Escalator, or take an Aspirin.

**2. Fighting Infringement.** You must diligently protect your mark. Trademark protection can also be lost if you allow others to continually infringe upon your mark without asserting your rights.

**3. Designation of Your Rights.** If you believe you have trademark rights, you should always use the superscript <sup>TM</sup> or <sup>SM</sup> symbol on any mark you are using to differentiate your products or services from your competitors. You do not need to complete any type of registration to use these designations. Once you have obtained a federal registration you can use the ® symbol. Note that you are not permitted to use the ® until you have obtained a Federal registration.

**4. Trade Names vs. Trademarks.** A trade name refers only to the name of the business (e.g. Ford Motor Company), whereas trademarks are words, phrases, symbols, designs, or a combination of both that are used to designate the source or origin of particular goods and services (e.g. Mustang). A business name may be a trade name and a trademark. For example, if Red Stripe Furniture, LLC is offering its services under its corporate name, then Red Stripe Furniture would be used to represent the business itself (trade name) as well as the good and services the company provides (trademark).