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File Under: You Learn a New Thing Every Day

Posted on August 4, 2010 by [Sharon Armstrong](#)

I come from a family in which knowledge of details, minutiae, trivia and other such trifles are well-prized. It is with this long-nurtured sense of curiosity that I therefore approach new factoids with relish.

So imagine my surprise, when reading the delightfully geeky [Wordplay blog](#) (the crossword puzzle blog of the *New York Times*), to learn that “MACE is actually a registered trademark for a spray first sold in 1962 by Lake Erie Chemical.” Having little experience with this substance, I had never thought one way or the other as to whether MACE was a brand or a particular type of pepper spray. Indeed, Mace Trademark Corp. owns multiple registrations for MACE in connection with “[self-defense products, namely tear gas, pepper and dye spray weapons](#)” and “[volatile liquid preparation for temporarily incapacitating persons](#).” By virtue of these registrations, the trademark MACE is presumed to be a valid, distinctive mark capable of identifying a single source.

However, the United States Patent and Trademark Office has also registered multiple marks listing the product (rather than brand) “mace,” including [LIFE GUARD](#), registered (and now cancelled) for “personal safety defense products, namely dispensers containing tear gas, mace, pepper or combinations of the above ingredients” and [RAINE](#) for “gun belts, rifle slings, ammunition pouches, holsters, ammunition cases, sheaths for tear gas containers, nunchaku holders, flash powder pouches, gun magazine pouches, shotgun shell holders, holders for police equipment, namely, cuffs, mace, keys, radios and flashlights.”

Notably, the Trademark Manual of Examining Procedure indicates that it is “inappropriate to use a registered mark to identify a kind of product or a service, because such a mark indicates origin in only one party and cannot be used to define goods that originate in a party other than the registrant.” TMEP 1402.09. The TMEP directs Examining Attorneys to require deletion of the registered mark in the identification of goods or services and require that “generic wording be substituted.”

This provision of the TMEP is an important tool for trademark attorneys and brand gurus to keep in the back of their minds to prevent genericide, or the loss of the source-identifying capability, of their marks.

