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International Trademark Guide

By Wendell Ray Guffey¹

Intellectual property (IP) has become a major factor in worldwide research and business activities. Patent and trademark infringement issues must be addressed before a product can be developed and marketed. Treaties such as the North American Free Trade Agreement (NAFTA) and General Agreement on Tariffs and Trade (GATT) have increased the value of IP and the enforceability of IP rights throughout the world. Similarly, recent changes in IP laws in many countries have increased the scope of IP, e.g., a trademark registration can be obtained for “colors” in the United States² and Australia³, a trademark registration can be obtained for product container configurations in the United Kingdom⁴, and a trademark registration can be obtained for sounds, colors, and three-dimensional designs Germany.⁵ Further, many businesses that must rely on “high technology” to remain competitive in an increasingly international arena are focusing on the development and protection of IP as a means of protecting large investments in products.

As IP becomes more valuable the need to educate employees to recognize IP issues and protect IP assets increases. However, methods for educating employees as to the value of IP vary, including doing nothing, doing nothing and relying on employees to educate themselves, providing access to legal education seminars, providing in-house training from legal counsel, and increasing access of pertinent information through magazine and journal subscriptions. A more systematic method for educating employees to recognize IP issues is needed, particularly in the world of rapidly changing IP laws facing today’s international businesses. A company that wants to protect its IP must provide access to information about IP and develop methods to educate its employees to recognize and deal with IP issues.

This article focuses on one form of IP, trademarks, and proposes a “Trademark Guide” that can be distributed to employees as an educational tool for increasing employees’ awareness of trademarks as a valuable IP asset.

The Guide defines trademarks, service marks, housemarks, certification marks, and collective marks and distinguishes trademarks from other forms of intellectual property and related rights, i.e., patents, copyrights, trade secrets, trade names, and product registrations. The Guide also describes different types of trademarks, i.e., invented or coined trademarks, arbitrary trademarks, suggestive trademarks, and descriptive trademarks, and discusses the advantages and disadvantages for each type. Further, the Guide discusses methods for selecting appropriate trademarks and describes proper techniques for using and protecting trademarks. The Guide concludes with a brief discussion of international treaties for the protection of trademarks and trademark licensing.

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² Qualitex Co. V. Jacobson Products Co., Inc., 115 S.Ct. 1300 (1995).

³ Trade Marks Act 1995, reg 4.3(7) (color is registrable as a trademark under the new Australian Act that went into effect on January 1, 1996).

⁴ Trade Marks Act (The new United Kingdom Trade Marks Act was effective October 31, 1995).

⁵ German Trade mark Act (Markengesetz), effective on January 1, 1995.

The Trademark Guide is not an exhaustive review of trademark issues designed to teach an employee how to practice trademark law nor a scholarly publication intended as a trademark law treatise. The Guide provides basic information and guidance while teaching the employee to recognize trademark issues and seek advice from trademark counsel when needed. For example, the Guide should be used by employees when drafting advertisements, labels, catalogs, and similar documents but such documents should not be distributed until reviewed and approved by trademark counsel.

The Guide should be distributed with a listing of a company's trademarks. Two lists are needed. A list of trademarks⁶ showing the countries where the trademarks are applied-for and registered:

TMARX

Goods: Rabies Vaccines

The Mark is applied for in the Following Countr(y)(ies):

Canada Ireland Germany France Spain

The Mark is Registered in the Following Countr(y)(ies):

Argentina Australia Bophuthatswana Brazil Costa Rica Dominican Republic
Iran Mexico Pakistan South Africa South Africa Switzerland Taiwan United
Kingdom

And a list of countries showing the trademarks applied-for and registered:

Brazil

Applications are pending for the following Trademark(s):

DEFEXX BIOXX TRADXX COXXX DYNAXX EXXORR

The following Trademark(s) are Registered:

TMARX COLORRN CEPRAVIX DEFERT CORTYY MARKTRTY COLDREX
RALTREW STANDERT GROWFAST SMARXX EXXTERK

These two lists enable an employee to look up a country in the Guide and determine which trademarks are being used in that country or to look up a trademark in the Guide and determine which countries are listed for that mark. A sample page further demonstrating each type of list is shown at the end of this Guide.

The Guide is preceded by an "Introduction" to be used if company executives want to endorse the Guide and a "Table of Contents" to simplify Guide usage. [The Introduction would, of course need to be customized for use by a particular company.

⁶ The majority of the trademarks used in this Guide are made-up or are nonsense words. Trademarks such as XEROX, EXXON, TIDE and the like that are used in examples to illustrate trademark types or uses are the property of their respective owners.

INTRODUCTION

Company One, Inc. (COI) and its affiliates market a full line of animal health products to customers throughout the world. COI trademarks identify our products and signify quality and value to our customers. COI and its affiliates have 200 trademark registrations or pending trademark applications in the United States and 1100 trademark registrations or pending trademark applications in 164 countries. Trademarks are, therefore, one of COI's more important and valuable assets and, as such, should be understood and protected by all COI employees.

The continued success of our business requires that we obtain valuable trademarks for new products and that we protect the integrity and value of our existing trademarks. Trademarks distinguish our products from those of our competitors and serve as a commercial signature that identifies COI as source of quality products. It is, therefore, essential that all COI employees, particularly those responsible for our trademarks and the products they represent, understand the importance of trademarks. Each employee should understand the procedures for obtaining, maintaining, and protecting trademarks. Similarly, each employee should understand the rules that govern how trademarks are to be used in memorandum, letters, brochures, advertisements, labels, and the like.

COI recognizes the competitive advantage inherent in a strong trademark portfolio. COI can obtain such a competitive advantage only if each employee understands the attributes of trademarks and the actions required to protect the investment in this valuable intellectual property asset.

The Legal Department prepared this Trademark Guide to assist COI employees with obtaining and maintaining COI trademarks and with determining the status and proper use of our trademarks. Please follow the instructions in this Trademark Guide carefully.

This Trademark Guide is intended as a ***guide only***. It is not a substitute for advice from legal counsel. Please direct questions concerning trademarks to the Legal Department. Inquiries should be directed to:

Name of Trademark Counsel and Staff

(including site location, addresses, phone numbers, e-mail, etc.)

Signature of CEO

Printed Name

Title:

Trademark Defined

A **trademark** is a word, name, symbol, device, picture, design, numeral, monogram, abbreviation, acronym, slogan, phrase, label, configuration of goods, package, surname, geographical name, or any combination thereof that is adopted and used to identify the source or origin of goods and that is capable of distinguishing those goods from the goods of another. The role of a trademark is to identify goods and distinguish those goods from the goods of another by distinctly pointing out the source of the goods. A trademark embodies its owner's goodwill and reputation and, as such, serves as a commercial signature. A trademark registration can also be obtained for colors, sounds, and scents in some jurisdictions. A trademark registration, however, cannot be obtained for generic names, descriptive terms and functional configuration elements.

A trademark owner has the right to exclude others from using the owner's trademark or a similar trademark that, when applied to goods, would be likely to cause confusion as to the source of the goods.

There are two classes of trademarks in the United States and most other countries: (1) registered trademarks and (2) unregistered trademarks. Both classes possess the property rights associated with trademarks. These property rights are acquired by using the trademark and are strengthened by registering the trademark. Registration is valuable because it places all others on notice that the trademark is in use and is the property of the registrant. Also, registration often gives the registrant procedural advantages if litigation results from a dispute over the trademark and allows the registrant to collect more damages for infringement.

In contrast, the rights associated with trademarks in many countries are acquired only by registration rather than by use in commerce. In such countries, early filing of trademark applications and registration of trademarks is essential if rights are to be obtained for any particular trademark.

A trademark is synonymous with a **brand name**. A trademark connects a product with a source such as a manufacturer, seller or distributor. A trademark must be located on or closely associated with the goods it is designed to identify.

A trademark has the unique ability to connect a product with a source in the mind of a consumer. This ability enables the source (trademark owner) to expend energy, time, and money promoting itself and the product. Similarly, a trademark enables a potential consumer to identify and select a product based upon a previous satisfactory use or based upon persuasive advertising. A consumer can, therefore, purchase a product bearing a recognizable trademark knowing that the product is from the same source and that the product will be of the same quality. A trademark on a product carries the image or "good will" of the source and the source's reputation for producing high quality products.

A **service mark** is a word, name, symbol, device, picture, design, numeral, monogram, abbreviation, acronym, slogan, phrase, label, package, surname, geographical name, or any combination thereof that is adopted and used to identify the source of origin of services and that is capable of distinguishing those services from the services of another. "Holiday Inn" is a service mark that identifies the lodging-related services provided by the hotel. Similarly, "McDonalds" is a service mark that identifies the food-related services provided by the restaurant.

A service mark possesses all of the rights, characteristics, and attributes of a trademark with the exception that it is used to identify a service. Service marks are also registerable with the United States Patent and Trademark Office and in many countries. The concepts, rules and guidelines offered by this Guide in regard to trademarks are equally applicable to service marks.

A "**housemark**" is a trademark used on many or all products marketed by a company to indicate that such products came from the company. A second trademark is generally used with the housemark on a product to identify the product. For example, a company with ten products will likely have ten trademarks, one for each product, but will have only one housemark. A housemark is also used to identify a company on stationery, advertising, letterheads, signs, brochures, and the like. "IBM" is a housemark.

A **certification mark** is a word, name, symbol, or device, or any combination thereof used by a person other than its owner to certify regional, quality, accuracy, or other characteristics of goods or services

performed by members of a union or other organization. The Good Housekeeping Seal of Approval and the Underwriter Laboratories seal in the United States are examples of certification marks that signify quality products based upon approval from associations.

A **collective mark** is a trademark or service mark used by members of a group or association to indicate products or services that originate from the group or association. Fraternal organizations and automobile clubs are examples of such groups.

Housemarks, certification marks, and collective marks, possess all of the rights, characteristics and attributes of a trademark.

Trademarks Distinguished

A **trademark** is not a trade name, copyright, patent, trade secret, product registration, or trade dress. The term “**trademark**” is, however, often confused with and sometimes used to identify one of these forms of property. These different forms of intellectual property and associated rights must be distinguished and used correctly if intellectual property rights, particularly trademarks, are to be protected. The following definitions and examples are intended to clarify the distinctions.

A “**trade name**” is the name under which a person, firm or corporation does business. Company One, Inc. is our corporate or trade name. A trade name is a name, a noun, whereas a trademark is an adjective that identifies the source of the product. Company Two, Inc. and Company Three, Inc. are other examples of trade names. A trade name, that identifies our business, and a trademark, that identifies our products and associates them with our business, are, therefore, not the same and should not be confused or used interchangeably.

A “**copyright**” is a right granted to an “author” by the government. A “copyright” prevents others from copying the author’s “works” that have been fixed in a tangible form. A copyright can be obtained for such things as books, musical works, pictorial and graphic designs, records, publications, computer programs, and the like. There is a copyright for this Trademark Guide. A “copyright” has a term of the life of the author plus fifty (50) years.

A “**patent**” is a right granted to an “inventor” by the government that prevents others from importing,

making, using, offering for sale, or selling an inventor’s “invention” during the term of the patent. A patent can be obtained for new and nonobvious inventions and designs. A United States patent has a term of seventeen (17) years from the date of issue or twenty (20) years from its application date and cannot be renewed. Patent terms can be extended by law, generally as compensation for delays experienced in the regulatory approval process.

A “**trade secret**” is information, including a formula, pattern, compilation, program, device, method, technique, or process, that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Simply stated, a trade secret is information that is: (1) used in a business, (2) kept secret; and (3) capable of giving a competitive advantage to its owner. A “trade secret” remains valuable only as long as the subject matter is kept confidential.

A “**product registration**” is a right granted to an “owner” by the government to sell a product within its jurisdiction. A trademark registration is not a product registration. In most countries, a product must be “registered” with the government (Food & Drug Administration, Environmental Protection Agency, U.S. Department of Agriculture in the U.S. and similar Agencies in other countries) before it can be sold. A trademark is “registered” by the Trademark Office. A “trademark registration” gives the owner the right to use the trademark as a means to identify the product to be sold. The “product registration” gives the owner the right to sell the product.

“**Trade dress**” generally means the packaging or the aesthetic appearance of a product. Trade dress can include the configuration of the product itself or the shape and appearance of the package or container in which the product is sold. The distinct shape of a beverage bottle or the color pattern on a detergent box are examples of trade dress.

Trademarks are, therefore, distinguishable from these other forms of “intellectual property” and from product registrations and trade names. It is important that these different types of property be understood

and that the terminology for each type not be confused or used interchangeably.

Trademark Types

Invented or Coined trademarks are words, symbols or other devices that have not previously appeared in the dictionary and do not, therefore, convey any information about a product or its characteristics and functions. From a legal view, these are the most desirable marks. They are generally the easiest to register and protect and are often given a broad range of protection against infringement by others. Examples of such marks include:

KODAK for film
XEROX for photocopiers
RALGRO for anabolic agents
EXXON for gasoline

Arbitrary trademarks are words, symbols or other devices having an existing meaning and are often common dictionary words. However, they are used on products that are not related to the word. They convey no information about the product or its characteristics and functions. Examples of such marks include:

SABER for insecticidal ear tags
APPLE for computers
CAMEL for cigarettes
TIDE for detergents

Suggestive trademarks are words, symbols or other devices that are not of themselves descriptive of the product or its characteristics and function, but are somewhat suggestive of qualities of the product or the product. A suggestive mark gives an impression from which the consumer can then somehow make a mental association with the quality of the product. These marks are often preferred by marketing personnel because they are deemed to enhance the products appeal to the consumer. Examples of such marks include:

STEER-OID for a steroid growth promoter
MICROBISTAT for a bacteria growth inhibitor
ULTRATAGGER for an eartag installation tool
KEEP AWAY for insect repellents

Descriptive trademarks are words, symbols or other devices that are merely descriptive of the products or of its qualities, characteristics or

components. The term “descriptive trademark” is a misnomer since so called descriptive trademarks ordinarily cannot function as a trademark and will be refused registration. Examples of such marks include:

FLEA KILLER for a flea insecticide
KAR KLEAN for an automobile detergent
BUG REPEL for an insect repellent
DOGGIE CLEAN for a dog shampoo

Trademark Selection

Trademark selection is quite often a result of a compromise between the conflicting legal and business views. Legal counsel prefers selecting a “coined” or “arbitrary” mark for the product. A coined or arbitrary mark is easily registered thereby obtaining the benefits of registration. Similarly, coined or arbitrary marks are easy to protect and are often given a very broad range of protection. Conversely, marketing personnel want to select a mark that describes all the desirable features of the product (Bug-Away for a bug repellent). From the legal view, this is a very poor choice. First, the words are so obviously descriptive that they are likely unprotectable as a mark or at most are entitled to a narrow range of protection. The term “away” is laudatory and may be considered merely descriptive. Similarly, the term “away” will likely be used in many other registered marks. This similarity to other marks increases the chances of registering the mark but makes the mark “weak” since it is similar to so many other marks. Further, this similarity to other marks also raises the likelihood that another party with a similar mark will oppose an application for the mark or that infringement problems will arise. A compromise between these conflicting theories often results in the selection of a suggestive or arbitrary mark.

An unregistrable descriptive word cannot be converted into a registrable trademark by merely changing the image or spelling of the mark. Changing from CAR CLEAN to KAR KLEAN will not make the new mark registerable. The pronunciation of the mark is as important as the image of the mark. Phonetically equivalent marks are the same for registration purposes, even if they are spelled differently.

The process for selecting and registering a new trademark should begin about eighteen (18) months before the mark will be used to launch a new product. Waiting until a few months (or typically weeks or days)

to begin the selection and registration process means that the product must be launched before the availability of the mark can be ascertained and a registration obtained. The mark may have to be abandoned and a new mark chosen for the product if difficulty with the application arises after the mark is in use and the mark is determined to be unavailable, e.g., because another mark that was not located in the search is cited by the Trademark Office or because the Trademark Office deems the mark unregistrable. The time, effort, and expense associated with obtaining the first mark, abandoning such mark, and selecting a new mark significantly increase the cost of the marketing the product. Similarly, the cost associated with new labeling and packaging and the effect on product marketability caused by switching trademarks after a product launch should be considered.

Choosing Candidate Trademarks

Considerable time, effort, and money are spent promoting a product under a new trademark. Accordingly, significant time should be spent selecting the right trademark for the product, preferably early in the new product development process. There are, however, no set rules to follow for selecting a new trademark. The following suggestions may be useful for selecting a strong trademark:

Choose a mark already owned by COI if the product is in the same category as a former product or is an extension of a product line. Previously used trademarks have developed a certain amount of identification and "Good Will" that can help promote the product.

Choose a trademark that is distinct from a trademark already in use by another company on the same general class of goods.

Choose an arbitrary trademark - the strongest possible trademark.

Choose a non-suggestive mark. The most common type of trademark is one that is suggestive of the product or its use. Great care should be exercised in selecting a suggestive trademark. Suggestive trademarks may become associated with the product rather than identifying the product with its source. A trademark that is too suggestive of the product may not be protectable or may become a generic term for that product.

Choose a mark that conveys a desirable connotation and has an appropriate meaning when translated into foreign languages.

Choose a mark that is easy to use in written form. Having a "cute" mark with a chicken profile on it may get attention but how will a secretary insert the mark in a memorandum or letter? The cost for stationery and related paper goods will increase if the mark is difficult to use in written form.

In general, choose a trademark that is:

- Brief;
- Easy to remember;
- Easy to read and pronounce; and
- Readily adaptable to various media.

Trademark Searching

The Legal Department should be contacted when a new trademark is being considered. Once a trademark has been tentatively selected, a search will be conducted to determine the availability of the proposed trademark. The proposed mark will be compared to previously established trademarks. When the search is completed and evaluated, the trademark can be adopted if distinctive and likely registrable or dropped if confusingly similar to other trademarks.

Generally, trademarks are obtained on a country by country basis. Therefore, a prospective trademark must be cleared in each country where it will be used. A trademark may be available in some countries but not in other countries. Selecting an arbitrary mark increases the chance that a particular mark will be available in multiple countries.

Trademark Registration

After a trademark has been chosen, searched and approved for use, the Legal Department will file an application with the appropriate Trademark Office to register the trademark. The U.S. and some other countries have two methods for seeking trademark protection: (1) intent-to-use registration for trademarks to be used later and (2) actual registration for a trademark already in use. Some countries have only one method for seeking trademark protection: intent-to-use registration.

Intent-To-Use Registration

A potential trademark user can file an "Intent-To-Use Application" in the U.S. and most other countries for a trademark that the applicant has a *bona fide* intent to use on identified goods or services. As noted previously, this "Intent-To-Use Application" should be filed about eighteen (18) months before the product is expected to be marketed.

The following information is required to file an Intent-To-Use application for registration of a trademark:

- A list of the goods on which the trademark will be used; and

- A drawing of the trademark as it will be used on the goods.

For the U.S., the United States Patent and Trademark Office will examine the trademark and issue a notice of allowance if the trademark is deemed registerable. Within six (6) months after the notice of allowance is issued, a verified statement must be filed stating that the trademark is in use in commerce and specifying applicant's date of first use of the trademark, those goods or services specified in the notice of allowance on or in connection with which the trademark is used in commerce, and the mode or manner in which the trademark is used on or in connection with such goods or services.

For a fee, the time for filing the verified statement can be extended for an additional six (6) months. For a fee and upon showing of good cause why actual use of the trademark has not commenced, the time for filing the verified statement can be extended for up to twenty-four (24) additional months.

A similar procedure is available in most countries. However, the law concerning trademarks is unique for each country. Trademark applications must be filed and prosecuted on a country by country basis. Some treaties exist but such treaties have not been useful to date.

The Legal Department will notify the trademark user when the trademark is registered. The trademark should thereafter be accompanied by a designation indicating that it is a registered trademark. The designation varies country by country but most countries are accepting the ® as indicative of a

registered trademark. The ® should not be used until after the mark is registered. A trademark is not registered until it has been approved by the United States Patent and Trademark Office or its equivalent in other countries. Prior to registration, a ™ (for the U.S. and many other countries) or an "*" is used to signify that an unregistered trademark is being used with the product.

Actual Use Registration

In the U.S., an application to register the trademark can be filed after a trademark has been used in interstate commerce. Similar rules exist in Australia, Canada, Ireland, New Zealand, and the United Kingdom. Prior to 1989, actual use registration was the only method available in the U.S. Actual use registrations should be avoided since Intent-to-Use applications can be filed. The following information is required to file an application for registration of a trademark already used in interstate commerce:

- A copy of the invoice representing the first interstate or international shipment showing the new trademark or brand name designating the goods shipped; and

- Five photographs of containers used in the first interstate or international shipment or, if the labels or containers are small, five of the actual labels or containers showing the trademark as used.

The Legal Department will notify the trademark user when the trademark is registered. The trademark should thereafter be accompanied by a designation or "marking" indicating that it is a registered trademark.

Trademark Usage

Trademarks must be used properly and consistently or their value and usefulness will be diminished. Improper and inconsistent use can result in the loss of all trademark rights. Although the rules presented below are intended to illustrate proper trademark usage in advertising literature, publicity releases, published bulletins, business forms, correspondence (internal and external), packages, containers and labels, it is equally important to correctly use trademarks in other forms of written and oral communication. Proper use in internal memorandum is

particularly important since it illustrates proper usage and educates employees that read the document.

General Rules

The following rules should be followed when using a trademark, particularly when applying the trademark to goods or displaying the trademark on advertising or other printed media:

Spell the trademark correctly. Do not deviate from the established spelling, including appropriate spaces, hyphens, or other punctuation.

Use capitalization consistently. The preferred method uses all capitals for the trademark but if the mark is to be stylized always use the same stylized format.

Use a standard appearance for the trademark. A standard appearance increases recognition of the mark by the consumer.

Use the trademark only as a brand name in combination with the common name for a specific product. The trademark must be used at least once in conjunction with the generic name of the product on every label, container, or text referring to the trademark. Moreover, it is excellent practice to use the term “brand of” between the trademark and the generic name as follows:

Correct: TMARX[®] brand of Vaccine
(Vaccine is the product)

Correct: TMARX[®] Vaccine
(Vaccine is the product)

Incorrect: TMARX[®]

Correct: DEFEXX[®] brand of Insecticide
(Insecticide is the product)

Correct: DEFEXX[®] Insecticide for Dogs

Incorrect: DEFEXX[®]

Use the trademark only as an adjective. A trademark should NEVER be used as a verb or descriptive name. Also, do not use names derived from the trademark.

Generally, a trademark should not be used as a noun. An exception exist when a trademark is used multiple times on a label, page, or similar document.

A test for correct usage in a sentence is: “Would a complete thought be conveyed if the trademark were eliminated from the sentence?” If the answer

is yes, the usage is correct. If the answer is no, the usage is incorrect and should be reconsidered and revised.

Removing “TMARX” from the following sentence does not affect the meaning:

TMARX[®] (brand of) Vaccine is useful for preventing disease in animals.

Removing “TMARX” from the following sentences destroys the meaning:

TMARX[®] is useful for preventing disease in animals.

(Improper use as a noun)

TMARX[®] those animals to prevent disease.

(Improper use as a verb)

Use a registered trademark only on goods recited on the registration certificate. Do not use a trademark on a product other than the one for which it was originally approved. For example, a mark registered for “pour-on insecticide formulations” should not be used on an “insecticidal ear tag” product. Contact the Legal Department for advice if a currently registered trademark is to be used on a new or different product. A list of COI trademarks and the appropriate goods for each trademark is included with this Trademark Guide.

Do not designate a trademark as registered if, in fact, it has not yet been registered. Registered means having been approved by the U.S. Patent and Trademark Office or its equivalent in other countries. Mismarking is deemed “fraud” in many countries. Mismarking can result in civil and criminal penalties.

If a trademark is not registered, it should be designated as a trademark by the use of the word “Trademark” or the symbol [™] in close association with the trademark in the text or in a footnote. The words “brand of” are equally effective and serve as a convenient bridge between the trademark and the generic name of the product. Exact form varies on a country by country basis. If in doubt, contact the Legal Department.

If a trademark is registered, place a clearly understandable registration notice near the trademark at least once on each label, package or

printed item displaying the trademark. Preferably, the ® should be used to clearly indicate that the mark is registered (TMARX® brand of Vaccine). It is sufficient to use a notice once with the first or most prominent use of the trademark, but it is preferable to use the notice every time the trademark is used. The notice should not appear in a location that could apply to unregistered as well as registered marks. The terms “Marca Registrada” and “Marque Deposee” are used in some countries. Exact form varies on a country by country basis. If in doubt, contact the Legal Department.

A registration symbol should not be used if the trademark is used in a form other than the registered form. If a mark is registered in a “stylized” form, the registration symbol should be used only with the stylized form. A stylized form is one that uses unique elements in the mark, e.g., “TXspot” is a mark with a design incorporated into the mark because the first two letters are always capitalized and the last four letters are always in lowercase.

Trademarks should be written, typed or printed in a distinctive manner. If a trademark is used with non-capitalized words, it should be capitalized. If used with capitalized words, it should be put in quotation marks. Use of the proper form for text. “Tmarx” is acceptable but should be avoided since it is difficult to distinguish a trademark that starts a sentence from a common word, particularly if the mark is used without marking. Using quotation marks to distinguish a trademark from surrounding text is acceptable but not preferred, e.g., “Tmarx” brand of Vaccine. When possible, the trademark should be in bold or darkened typeface and in all capitals. The following formats are preferred: **TMARX®** brand of Vaccine or **TMARX®** brand of Vaccine.

A “housemark” should be given special attention. A housemark should always be used in its registered and distinctive form. The housemark should be clearly separated and distinguished from other trademarks when two or more marks are used together. If the marks are not distinguishable, the less distinctive mark may be deemed descriptive of the product and result in the loss of trademark rights for the less distinctive mark. Also, a potential infringer may use one of the marks and argue

when challenged that the marks must be used together because consumers identify them as a single mark and would be confused if they were not used together.

Do not use a housemark to identify a corporation. Use a trade name to identify a corporation.

Trademarks should be used only in a manner and form consistent with this Trademark Guide. A list of all registered or applied-for U.S. and international trademarks is attached to this Trademark Guide.

Certain trademarks may be subject to licensing restrictions and agreements. Any deviation from the terms in such contracts may place COI in breach of such contracts. Consult the Legal Department with questions about proper trademark use or proper trademark form.

Trademark Notice

A “notice symbol” or “marking” that signifies to the consumer that the “mark” being used is a trademark should be placed adjacent to the trademark. “Marking” is important because it places others on notice of the owner’s trademark rights and discourages them from adopting the same or similar trademarks for their products. Proper marking therefore helps to reserve the trademark for the owner and prevent confusion that could result if competitors use similar trademarks.

Proper marking also gives the owner more legal rights should an infringement occur. For example, damages can only be recovered in the U.S. for infringements that occur after the infringer has notice of existing trademarks rights. Proper marking for a registered mark serves as constructive notice of such rights. Similarly, marking in Chile, Zaire and a few other countries is compulsory. Omitting the proper marking results in the loss of criminal sanctions such as injunctions and seizure remedies against infringers.

Further, placing the proper marking on a trademark is compulsory in some countries, e.g., China, Indonesia (no penalty for non-compliance), Costa Rica (\$50 penalty for non-compliance), Zaire (registration may be non-enforceable if the marking is omitted).

“Marking” should only be used when trademark rights exist. In many countries, Australia and the United States for example, it is a criminal or civil offense to use marking when the owner has no trademark rights, particularly when a trademark is marked as registered and no registration exists.

Registration notice differs from country to country. Various terms used to indicate that a trademark is registered include “Marca Registrada” or M.R. (Spain and Argentina), “Marque Déposé” (France and Zaire), “Registered Trademark” or ® (United States and United Kingdom), “Eingetragene Warenzeichen” (Germany), and “Marchio Registrato” (Italy).

However, use of the ® and ™ is becoming accepted in most jurisdictions. The following suggested markings are, therefore, acceptable for most countries:

Proper notice or marking for registered trademarks:

®

Proper notice or marking for unregistered trademarks:

™

Alternatively, an asterisk can be used in place of the ® or ™ to direct the reader to a footnote giving registration notice in one of the following forms:

For unregistered trademarks:

Trademark

Trademark of Company One, Inc.

For registered trademarks:

Registered Trademark

Marca Registrada

Marque Déposé

Registered Trademark of Company One, Inc.

Registered in U.S. Patent and Trademark Office

Reg. U.S. Pat. Tm. Off. (U.S. Only)

The following examples indicate correct usage of various marking schemes:

SABON¹ Insecticide Ear Tags

SABON* Insecticide Ear Tags

SABON™ brand of Insecticide Ear Tags

DEFEXX® Insecticide

DEFEXX® brand of Insecticide (preferred)

TMARX® Vaccine

TMARX® brand of Vaccine (preferred)

For the examples marked with a “1” or a “*”, use a footnote giving registration notice in one of the forms described above, e.g., SABON is a registered trademark of Owner Company, Inc.

Specific Uses

Different departments within COI use trademarks in a variety of ways. Each department should be familiar with proper usage and responsible for properly using trademarks while accomplishing departmental goals. Incorrect trademark usage weakens a COI’s claim to its trademark rights and can result in total loss of trademark rights. Improper usage is embarrassing and signifies to competitors and the consumer that COI cannot manage its valuable assets. Such improper usage indicates a lack of professionalism characteristic of a quality company marketing quality products.

Generally, a trademark should be used with proper notice and with a generic description of the product the first time the mark is used on a page, e.g., TXspot® (brand of) Insecticide is used to prevent infestations that.... Thereafter, the mark can be used without the notice or the generic description of the product, e.g., TXspot is also used to kill insects that.... Preferably, the mark will be distinguished from surrounding text in some manner. Stylized marks should be used in their stylized form. Marks should be in “UPPER CASE” and in bold typeface if desired, e.g., TMARX or **TMARX**. Marks used in “**Title Case**” should be in bold typeface to distinguish them from surrounding text, particularly when they begin a sentence, e.g., **Tmarx** is sold.... In some situations, the mark should always be used with proper notice and with a generic description of the product each time the mark is used.

No trademark rights are at risk if the mark is always used with proper notice and with a generic description of the product each and every time the mark is used on a page, label, and the like. However, the text may look “busy” and be difficult to read if it contains numerous repeats of the mark and the generic product description. Similarly, for labels and other restricted space uses, using notice and the product description many times may cause the text not to fit into the allocated space. To avoid this problem, consider the following guidelines for different uses:

Advertisements. Notice and a generic product description should appear with the first or most prominent use on each page of the advertisement. Notice and generic product description does not have to be repeated each time the mark is used on the page.

Labels. Notice and a generic product description should appear with the first or most prominent use in each section of the label. Notice and generic product description does not have to be repeated each time the mark is used in a section. A section can be best viewed as a portion of the label that a consumer is likely to read as a unit. For example, a each of the six sides of a box should be considered a separate section and the “ingredients” and “warning” parts of a label should be considered a separate section.

Product Guides. Notice and a generic product description should appear with each and every use of the mark.

Catalogs. Notice and a generic product description should appear with the first or most prominent use on each page of the catalog. Notice and generic product description does not have to be repeated each time the mark is used on the page.

Brochures. Notice and a generic product description should appear with the first or most prominent use on each page or section of the brochure. Notice and generic product description does not have to be repeated each time the mark is used on the page or in the section.

Instruction Manuals. Notice and a generic product description should appear with the first or most prominent use at the beginning of the manual and at the beginning of each chapter or other unit of the manual. Notice and generic product description does not have to be repeated each time the mark is used in a unit of the manual.

Internal Memos and Other Documents. Notice and a generic product description should appear with the first or most prominent use on the first page, more often if the document is lengthy. Notice and generic product description does not have to be repeated each time the mark is used.

Press Releases. Notice and a generic product description should appear in the title and with the first or most prominent use on each page of the release. Notice and generic product description does not have to be repeated each time the mark is used on the page.

Packages. Notice and a generic product description should appear with the first or most prominent use

on each face of the package. Notice and generic product description does not have to be repeated each time the mark is used. For a box with six (6) sides, the notice and product description should appear once on each side.

Scientific Papers. The scientific or common name for the product should preferably be used in scientific and technical papers. However, if a trademark is used, notice and a generic product description should appear in the title and with the first or most prominent use of the mark and at the beginning of each chapter of the paper. Notice and generic product description does not have to be repeated each time the mark is used.

Business Reports. Notice and a generic product description should appear with the first or most prominent use in reports such as annual, quarterly, monthly, and similar business reports. Notice and generic product description does not have to be repeated each time the mark is used. If the report is lengthy or contains section or chapters, the notice and generic product description can be repeated at the beginning of each section. However, if the report contains a product list, notice and a generic product description should appear on each and every mark usage. Special care should be taken with these and other important documents to avoid embarrassing and potentially damaging trademark misuses.

Competitor's Trademarks

COI policy and good legal practice require all employees to respect the intellectual property rights of others and to expect others to respect COI's intellectual property rights. Therefore, careful attention must be given to advertisements, labels, and other documents that use trademarks owned by others, particularly comparative advertisements.

Trademarks owned by others are sometimes used on COI labels and products or in advertisements. COI may be a distributor or licensee authorized to use such trademarks or COI may be involved in comparative advertising that uses trademarks belonging to others (note that comparative advertisements are forbidden in many countries). License and distribution agreements often require a trademark to be used in a manner that ensures that the correct owner will be identified and

that trademark rights will not be lost due to inadvertent misuse.

Proper trademark notice must be placed on trademarks owned by others and the owner must be identified for the consumer. The trademark should have the appropriate notice, e.g., ® or ™, used with the mark and should have a footnote indicating the correct owner. For example,

TOTALX® brand of Pour-On Insecticide
on the label is followed by a footnote at the bottom of the label stating:

TOTALX is a registered trademark of Owner
Company, Inc.

Trademark Protection

Trademark rights may be lost if a trademark is not used for prolonged periods or if the trademark owner or another misuses the trademark. Most countries allow others to petition to cancel a trademark registration if the mark is not used for three (3) years.

To protect COI's trademark rights, the Legal Department should be notified immediately whenever an employee observes improper trademark usage, whether by the COI employees or by others. Such situations generally arise when someone else uses a trademark or trade name identical or similar to one of the COI's trademarks or trade name.

Both undesirable use and misuse of a trademark should be reported. Misuse of a trademark includes the improper use of the trademark as a noun, verb or descriptive name. Such use tends to make the trademark generic; the trademark becomes closely associated with the product and ceases to identify the product source. Trademarks that have become generic from improper policing include aspirin, webster's, yellow pages, rayon, cellophane, thermos, frigidaire, escalator, kerosene, linoleum, monopoly, nylon, and zipper in the United States and caplets in Australia. Trademarks being vigorously policed at this time to prevent their becoming generic include Coke®, Kleenex®, Band-Aid®, Xerox®, and Scotch®.

Care must be taken to assure that COI's trademarks remain trademarks and not be mistaken as generic names for products. Trademarks should generally be used with the common name for the product, e.g.,

TMARX® brand of Vaccine or TMARX® Anabolic Agent.

Use of trademarks in comparative or other advertisements should be carefully monitored. Any trademark misuse in comparative or other advertisements should be reported to the Legal Department so that such misuse can be corrected.

Other companies may wish to use our trademarks to show that our brand of product has been incorporated into their product. As discussed in detail below, this can sometimes be arranged through a licensing agreement. Should this issue arise, contact the Legal Department to arrange adequate protection for our trademarks.

Trademarks Worldwide

Generally, the rights afforded by a trademark registration in a particular country extend **ONLY** to that country. A registration in the United States has no legal significance in other countries. A registration in Australia gives no rights to use the mark in New Zealand. The Legal Department should be contacted before a product bearing a trademark is sold in any particular country or when a new trademark that may be used in many countries is to be adopted.

Most countries provide for registration of trademarks. Many countries grant trademark rights merely upon registration, often to the first person to apply for and register the trademark rather than to the first person to use the trademark. In such countries, mere use of a trademark affords little or no protection for the trademark. Therefore, it is imperative that the COI register its trademarks in all countries where the product will be sold. Such Registration will enable us to market its products in many different countries under common trademarks. Our failure to be the first to apply for and register a trademark in a country could preclude the sale of our products under the desired trademark in that country.

While most trademark rights are obtained on a country by country basis, there are treaties that permit an applicant to pursue a trademark registration that confers trademark rights in several member countries. These include the Andean Pact, European Community, Madrid Protocol, and Paris Convention.

Andean Pact

The Andean Pact or Cartagena Agreement allows individuals and businesses from member countries to secure protection for trademarks by filing an application under the terms of the Agreement. An application in one member country gives the applicant six (6) months to file applications in other member countries and retain the original filing date as a priority date. Member countries are: Bolivia, Colombia, Ecuador, Peru and Venezuela. U.S. citizens and companies are not eligible to file an application and obtain an Andean Registration because the U.S. is not a member of the Andean Pact. Different legal standards in member countries (legalization requirements, timelines, and other formalities) make it difficult to maximize the benefits of the Andean Pact for applicants from non-member countries. The principal benefit of the Agreement is the ability to retain a priority date based on application previously filed.

European Community

The European Community allows individuals and businesses from member countries to secure protection for trademarks by filing an application for a European Community Trademark ("ECTM") registration. Applications can be filed by (1) nationals of EU countries, (2) nationals of countries that are members of the Paris Convention, (3) nationals of countries that afford nationals on EU countries reciprocal trademark protection, and (4) persons or companies domiciled or having a seat or commercial establishment within the EU or a country that is a party to the Paris Convention. U.S. citizens and companies are eligible to file an application and obtain an ECTM registration because the U.S. is a member of the Paris Convention. A single ECTM registration provides the owner with trademark rights in fifteen EC countries (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain, Sweden, and the United Kingdom) and avoids the paperwork and costs associated with obtaining and maintaining fifteen registrations.

Madrid Protocol

The Arrangement of Madrid for the International Registration of Marks and the Protocol adopted in 1989 allows individuals and businesses from member countries to secure protection for trademarks by filing a

single application with the Central Registration Bureau in Geneva, Switzerland and obtaining an International Registration. A single International Registration can provide the owner with trademark rights in all member countries: Albania, Algeria, Armenia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, People's Republic of China, Croatia, Cuba, Czech Republic, Egypt, France, Germany, Hungary, Italy, Kazakhstan, North Korea, Kyrgyzstan, Latvia, Liechtenstem, Luxembourg, Macedonia (Yugoslav Republic), Moldova, Monaco, Mongolia, Morocco, Netherlands, Aruba, Poland, Portugal, Romania, Russian Federation, San Marino, Slovakia, Slovenia, Spain, Sudan, Switzerland, Tajikistan, Ukraine, Uzbekistan, Vietnam, and Yugoslavia. U.S. citizens and companies are not eligible to file an application and obtain an International Registration because the U.S. is not a member of the Madrid Arrangement.

Paris Convention

The Paris Convention allows individuals and businesses from member countries to secure protection for trademarks by filing an application under the terms of the Convention. An application in one member country gives the applicant six (6) months to file applications in other member countries and retain the original filing date as a priority date. Member countries include: Algeria, Argentina, Australia, Austria, Bahamas, Bangladesh, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Canada, Central African Republic, Chad, China, Congo, Cote d'Ivoire, Cuba, Cyprus, Czech Republic, DPR Korea (North), Denmark, Dominican Republic, Egypt, Finland, France, Gabon, Gambia, Germany, Ghana, Greece, Guinea, Haiti, Holy See, Hungary, Iceland, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Jordan, Kenya, Lebanon, Lesotho, Libya, Liechtenstein, Luxembourg, Madagascar, Malawi, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Morocco, Netherlands, New Zealand, Niger, Nigeria, Norway, Philippines, Poland, Portugal, Republic of Korea (South), Romania, Russian Federation, Rwanda, San Marino, Senegal, South Africa, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Syria, Tanzania, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Kingdom, United States, Upper Volta, Uruguay, Viet Nam, Yugoslavia, Zaire, Zambia, and Zimbabwe.

U.S. citizens and companies are eligible to file an application and obtain benefits under the Convention because the U.S. is a member of the Paris Convention. The principal benefits of the Convention are the ability to retain a priority date based on application previously filed and the provisions allowing registration in one country based upon a prior registration.

Other Treaties

Other treaties exist or are in the process of being considered. The Asia-Pacific Economic Cooperation (APEC) forum is studying establishing an APEC trademark system with common rules. APEC members include Australia, Brunei Darussalam, Canada, Chile, Hong Kong, Indonesia, Japan, the Republic of Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, the Philippines, Singapore, Thailand, China, Taiwan, and the United States. Benelux (Belgium, the Netherlands, and Luxembourg) enacted a new trademark law effective on January 1, 1996. Argentina, Brazil, Paraguay, and Uruguay are considering ratifying the Protocol on Harmonization of Rules on Intellectual Property in Mercosur in Relation to Trademarks, Geographical Indications and Denominations of Origin. The Protocol would harmonize the rules for obtaining and protection intellectual property in the Mercosur countries.

Trademark Licensing

A trademark owner may allow others to use its trademarks or may use the trademarks of others with permission, typically under the terms of a license agreement or distributorship agreement. However, even when the parties have an agreement, trademark rights can be lost if consumers cease associating the trademark with its owner. Therefore, trademarks licensed from others should be identified as the trademark owner's property. A label, brochure, catalog, report, or similar document should use the mark properly and should contain an ownership notice, e.g., "MARKX is a registered trademark of Other Company, Inc." This ownership notice is often placed on the title

page of a document, on the bottom of a label, inside the first page of a manual, or other conspicuous location.

Trademarks licensed to others should be monitored to make sure that the other party uses the mark properly and identifies the registrant as the trademark owner. Allowing consumers to associate the mark with the licensee can result in the loss of trademark rights. Methods of use and notice requirements are detailed in a properly drafted agreement. Samples of labels, catalogs, brochures, advertisements, and other documents showing trademark usage should be obtained periodically and reviewed for proper trademark usage. These documents can conveniently accompany royalty or other reports due under the terms of an agreement.

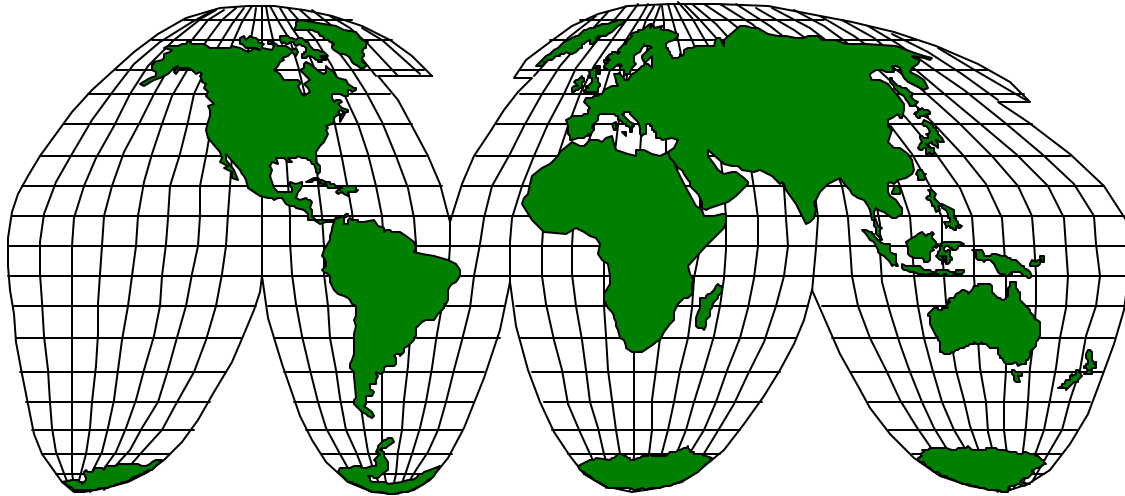
Trademark Guide Usage

This Trademark Guide contains a list of registered trademarks and trademarks that are the subject of pending trademark applications. Also listed is a sample of the goods for which the trademarks are registered. When a trademark is registered in the U.S., the goods listed with the trademark are U.S. goods. Otherwise, the goods are selected from another country. The goods are typically similar for registrations in other countries. However, the Legal Department should be contacted if there is a question about the goods listed.

Countries differ as to what constitutes proper use of trademarks and proper notice of registration. Improper use or improper notice may adversely affect our trademark rights. Using the ® with a mark that is not registered may be deemed fraud and grounds for cancellation of the registration.

No Trademark Guide can address all the issues or answer all the questions about obtaining, using and maintaining trademarks.

CONSULT THE LEGAL DEPARTMENT ON TRADEMARK ISSUES



Company One, Inc.

WORLDWIDE TRADEMARK GUIDE

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Sample page from a listing of countries in alphabetical order. The trademarks applied-for or registered are shown for each country.

CONFIDENTIAL

Property of Company One, Inc.

Aden

Applications are pending for the following Trademark(s):

None

The following Trademark(s) are Registered:

SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX
TESTMARKXX SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX TESTMARKXX

Afghanistan

Applications are pending for the following Trademark(s):

None

The following Trademark(s) are Registered:

SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX

Algeria

Applications are pending for the following Trademark(s):

SAMPLEMARKXX TESTMARKXX

The following Trademark(s) are Registered:

SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX
TESTMARKXX SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX
TESTMARKXX SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX
TESTMARKXX SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX
TESTMARKXX

Angola

Applications are pending for the following Trademark(s):

None

The following Trademark(s) are Registered:

SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX
TESTMARKXX

Argentina

Applications are pending for the following Trademark(s):

SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX
TESTMARKXX SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX
TESTMARKXX

The following Trademark(s) are Registered:

SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX
TESTMARKXX SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX TESTMARKXX TESTMARKXX
SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX
TESTMARKXX SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX
TESTMARKXX SAMPLEMARKXX TESTMARKXX SAMPLEMARKXX TESTMARKXX

Sample page from a listing of trademarks in alphabetical order. The countries where the marks are applied-for or registered are shown for each mark. The “Goods” for the mark are listed also.

CONFIDENTIAL

Property of Company One, Inc.

AAAABBB

Goods: Insecticidal Dips And Sprays For Sheep And Cattle

The Mark is applied for in the Following Countr(y)(ies):

None

The Mark is Registered in the Following Countr(y)(ies):

Algeria Argentina Australia Austria Benelux Bolivia Bophuthatswana Botswana Brazil Canada Colombia
Costa Rica Denmark France Guatemala Honduras Ireland Israel Italy Jamaica Japan Zimbabwe

AAAACCC

Goods: Veterinary Preparations And Substances

The Mark is applied for in the Following Countr(y)(ies):

Austria Italy Sweden

The Mark is Registered in the Following Countr(y)(ies):

Algeria Argentina Australia Austria Benelux Bolivia Bophuthatswana Botswana Brazil Canada Colombia
Costa Rica Denmark Dominican Republic Ecuador Egypt El Salvador France Guatemala Honduras Ireland
Israel Jamaica Japan Kenya Korea Mexico New Zealand Nicaragua Nigeria Paraguay Peru Portugal Russia
Singapore South Africa Swaziland Sweden Thailand Transkei Tunisia Turkey Uganda United Kingdom
United States Uruguay Venda Venezuela West Germany Zimbabwe

AAAADDD

Goods: Vaccines

The Mark is applied for in the Following Countr(y)(ies):

Algeria Argentina Australia Austria Benelux Bolivia Bophuthatswana Botswana Brazil Canada Colombia
Costa Rica Denmark Dominican Republic Ecuador Egypt El Salvador France Guatemala Honduras Ireland
Israel Jamaica Japan Kenya Korea Malawi Mexico Monaco Morocco Mozambique Namibia New Zealand
Nicaragua Nigeria Panama Papua New Guinea Paraguay Peru Portugal Russia

The Mark is Registered in the Following Countr(y)(ies):

None

AAAAEEE

Goods: Mineral Supplements For Animals

The Mark is applied for in the Following Countr(y)(ies):

United Kingdom United States

The Mark is Registered in the Following Countr(y)(ies):

Algeria Argentina Australia Austria Benelux Bolivia Bophuthatswana Botswana Brazil Canada Colombia
Costa Rica Denmark Dominican Republic Ecuador Egypt El Salvador France Guatemala Honduras Ireland
Israel Jamaica Japan Kenya Korea Malawi Mexico Monaco Morocco Mozambique Namibia New Zealand
Swaziland Sweden Switzerland Tanganyika Thailand Transkei Tunisia Turkey Uganda