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## A little about TRADEMARKS

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### What is a trademark?

The best a man can get® (Gillett slogan)

Nike® (brand name)

Nike Shox® (product line)



Apple®

(product and company logos)

If you use words or designs on your products or to advertise your services, to show that the products or services are provided by your business, and not a competitor, those are trademarks. The law protects your exclusive right to use your trademarks under certain circumstances.

### Trademark rights, notice symbols, and registration

Your trademark rights begin the moment you use your mark in commerce. Warn your competitors to steer clear of your trademarks by using the TM or SM designation. The TM symbol is for products and SM is for services. Ask your graphic designer to add the TM or SM to your design.

Did you know that registering your trademark gives you the exclusive right to use it, or anything that would be confusingly similar to it, in the United States? Once you have registered your mark, you are allowed to use the ® symbol instead of TM or SM. If you plan to register your mark, ask your graphic designer to do another version of your design with the ® symbol.

### Why you should register your trademarks

Your trademark rights begin when you use your mark in commerce. But, federal registration conveys many advantages, including:

- nationwide protection
- puts others on notice of your rights
- ability to sue in federal court to enforce your mark
- right to attorney's fees and triple damages under some circumstances
- strengthens your mark in litigation and negotiations

The best time to register your mark is before someone else starts using it or a similar mark. An application for registration can be filed before you begin using your mark in commerce.

### The registration process

Once your application has been prepared and submitted to the Patent and Trademark Office, it will be three to six months before it is examined by a Trademark Examiner for compliance with the trademark rules and to ensure it is not confusingly similar to another mark. If any changes need to be made to the application, the Examiner will let you and/or your lawyer know and you will have six months to make them.

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A little about TRADEMARKS, cont.

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If no changes need to be made, your application will be accepted and your mark will be published in the Official Gazette of the Patent and Trademark Office. Unless someone opposes your registration, your mark will then be allowed and, if it is in use, officially registered.

If you have not yet used your mark in commerce, you will have up to three years after allowance to begin using the mark and to submit evidence of your use in commerce to the Patent and Trademark Office. At that point your mark will be officially registered.

### **Trademark Search**

A new trademark cannot be registered if it is confusingly similar to an existing mark. Before settling on a logo or filing an application to register it, you may wish to conduct a trademark search to determine whether there are similar marks in use. A trademark attorney can conduct a thorough trademark search using Trademark Office design codes and other online resources for an additional fee.

If you do find something similar, you can ask your graphic designer to make changes to the design to ensure that your new trademark can be registered. Performing the search prior to the design and printing of marketing materials can avoid unnecessary expense.

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This information is supplied courtesy of Hyra IP, An Intellectual Property Law Office.  
Hyra IP helps businesses to register and defend their trademarks.

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