

Circle Up - When and How Trademark Symbols Should Be Used

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Trademarks can be a valuable asset to any business. Trademarks are the brand names, slogans, and logos that are used to create and build consumer awareness and recognition. When establishing a trademark, there are three symbols that are used to provide public notice that branding rights are being claimed in the trademark. The symbols are SM, TM and ®.

Where Does the Symbol Go? While there is no legal requirement in the U.S. regarding placement of the symbol, it is customary to place it in superscript on the right side of the mark. Sometimes, it is used in postscript on the right side of the mark.

Which Symbol Should Be Used? The ® can only be used once a trademark is registered with the U.S. Patent and Trademark Office. A trademark cannot be federally registered unless and until it is being used in interstate commerce. Also, a trademark is registered only with respect to the particular goods and/or services that are described in the trademark registration.

The TM and SM symbols can (and should) be used with unregistered trademarks. "TM" should be used for trademarks associated with goods and "SM" should be used for trademarks associated with services. For trademarks that are associated with goods and services, "TM" is generally used. Some situations where TM or SM should be used are the following:

1. A trademark is only being used within a single state, without use in interstate commerce.
2. A federal trademark application is pending or has not yet been filed.
3. A trademark is being used with goods and/or services that are not covered by a federal registration and/or the applicant is relying solely on rights based on use.

What Happens When a Trademark is Registered But ® Is Not Used? While it is not legally required to use the ® symbol in the U.S., failure to use it is not without consequence. While registration itself provides constructive notice of the registrant's claim of ownership in the mark, failure to use the ® symbol with the mark can affect the registrant's right to recover damages for infringement until

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the infringer receives actual notice of the infringement.

What Happens When ® Is Used Improperly? Improper use of ® occurs more frequently than it should, and is often unintentional. Some situations where ® is most often used incorrectly are:

1. An application for federal registration is pending or has not yet been filed.
2. A trademark registration has lapsed.
3. A trademark is being used with goods and/or services that are not covered by the registration.

Improper use of ® can have serious consequences, because it equates to making a false statement of the trademark's status and the trademark owner's rights. In the U.S. Patent and Trademark Office, improper use of ® may provide a basis for the examiner to deny trademark registration, or for a third party to oppose registration of the trademark. Additionally, in the marketplace, improper use of ® may support charges of fraud, false advertising, or unclean hands.

Ultimately, it is important to ensure that trademark symbols are used properly in order to maximize the protections provided under trademark law and avoid undesired consequences.

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