

Trade Mark Symbols & Notices & Proper Use of Trade Marks

What are the symbols and what do they mean?

™ = “Trade Mark”

Trade mark rights are being claimed in the mark (e.g. in the word, logo etc). The mark may or may not be registered.

® = “Registered Trade Mark”

The trade mark is claimed to be registered.

Is it compulsory to use the ™ ® symbols?

It is not compulsory to use the symbols in Australia. It is however desirable to use them. The main advantages are:

- they inform potential infringers that rights are claimed in the trade mark; this can make it difficult for an infringer to argue that its infringement was “innocent”
- they may act as a warning to potential infringers, and therefore have a deterrent effect
- they may prevent the trade mark becoming generic or falling into the public domain
- they may assist in proving that the mark is being used as a trade mark (rather than as a descriptive term), which is often useful when trying to overcome a “descriptive mark” objection of the Trade Marks Office
- some other countries require use of the symbols.

When should I use ® and when ™?

If the trade mark is not registered in Australia (whether or not the trade mark is the subject of a pending application), you must not use ® or any other words or symbols which suggest that the mark is registered in Australia. It is an offence under the Trade Marks Act 1995 to intentionally or recklessly make a representation to the effect that a trade mark is registered in Australia when it is not.

If a trade mark is not registered in Australia, you should use the ™ symbol.

If you do not know or cannot ascertain whether a mark is registered in the country in which it will be sold, you should use the ™ symbol. The ™ symbol may be used for both registered and unregistered trade marks.

How should the TM and ® symbols be used?

In general:

- the symbols are placed in close proximity to the trade mark, usually in a convenient spot on the right hand side of the trade mark
- the symbols do not need to be repeated every time a trade mark is used; the symbol can appear with the first or the most prominent use of a trade mark
- the symbols should, if convenient, be accompanied by notices (often at the back of packaging or as a footnote) – see “Trade Mark Notices” below
- the symbols and notices can be placed on any part of the products, their packaging, advertisements etc.

Trade Mark Notices

When the TM ® symbols are used next to trade marks, a trade mark notice usually appears on the back of the packaging or as a footnote in printed materials.

If the packaging of a product contains only registered trade marks, the notice may read (for example):

The XYZ Logo is a registered trade mark of XYZ Corporation.

However, it is also acceptable to state: The XYZ Logo is a trade mark of XYZ Corporation.

If the packaging contains a mix of registered and unregistered trade marks, it would be more convenient to state (for example):

The XYZ Logo and the ABC mark are trade marks of XYZ Corporation.

Copyright symbol © and Notice

The copyright symbol © is used to indicate that certain literary or artistic works (e.g. text, photos, artwork etc) are protected by copyright. Although copyright protection is automatic and does not depend on the use of the © symbol, its use is nevertheless recommended. The usual form of notice is to include a statement in the following form at the end of the document or work:

© [year work was created e.g. 2009]
XYZ Corporation

Guidelines on Proper Use of Trade Marks

The mark should be distinguished from its surrounding text. For example, initial Capital Letter, CAPITALISED, different *font*, or different *colour*.

Use the mark in the form registered. Do not modify e.g. do not change to plural or singular.

Use appropriate trade mark symbols ® or TM, at least the first time the mark appears.

The mark should be followed by a generic term (i.e. the common descriptive name of the product).

The mark should not be possessive (i.e. should not be used in the 's form, unless the mark itself is registered in a possessive form).

The mark should not be used as a verb.

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