

TRADE-MARKS

*Legal and commercial aspects with particular attention
to chemicals, chemical specialties and allied products,
including a list of trade-mark and trade-name products
and their suppliers*

by

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1949

CHEMICAL PUBLISHING CO., INC.

BROOKLYN

N. Y.

Trade-Marks

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ISBN: 978-0-8206-0033-8

Chemical Publishing Company:
www.chemical-publishing.com
www.chemicalpublishing.net

First edition:

© **Chemical Publishing Company, Inc.** – New York, 1949

Second Impression:

Chemical Publishing Company, Inc. - 2011

Printed in the United States of America

Preface

Since a good trade-mark is of great importance in merchandising a product, it has been felt that a book outlining the principles of trade-mark selection would be highly useful.

Buyers, sellers, manufacturers, lawyers and others will welcome this book which gives a comprehensive list of trade-mark products. Much of the information given has never been published before.

Although all the necessary information for the registration of trade-marks in the United States Patent Office is given, it is strongly advised that the registration is handled by an attorney experienced in this field. Suggestions made by him will often save time, money and effort and prevent possible lawsuits.

The writer has had many years of experience in coining trade-marks and hopes that this experience will be helpful to others. Some of the material used is taken from *Trade-Names* by Cousins and Wadsworth, with the kind permission of the Harlequin Press Co.

The author is extremely grateful to A. J. Nydick, registered patent attorney, for his scrutiny of the legal aspects of the manuscript before publication.

H. BENNETT

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Name FindersIn pocket on back cover

Introduction

Makers' names and trade-marks have been used for thousands of years, but the modern system of trade-marks was introduced in the United States about 1865. The first federal legislation on trade-marks was passed in 1870. This act, providing for the registration of trade-marks, was later repealed, and trade-marks were protected by an act of 1905, as amended in 1906, until July 1947, when the Lanham Act became effective.

Trade-Mark protection is of value not only to the manufacturer and vendor but also to the consumer. The consumer can easily remember the name and will get a product which is usually of a uniform and satisfactory quality. The advertising of the manufacturer fixes the trade-mark in the mind of the consumer. It promotes and simplifies reordering.

The naming of a new product is not as simple as it may appear at first glance. The name must be an entirely new one in the field concerned. Because of the many thousands of names now registered, it is not too easy to find a name that is suitable and does not bear some resemblance to a name already in use. Generally, a preliminary list of names is drawn up and this is weeded out until only a very few names are left. Even these may not be acceptable because conscious or subconscious analogies are drawn from existing names and thus a resemblance follows in the new names selected.

Four different ways of finding or coining original names are given in this book. Different types of available names are discussed in detail so that a provisional decision can be made in selecting the type of name particularly suitable to cover a definite product.

In practice, once a trade-mark is selected, usually it is not changed. A product or its package can be varied or improved, but the trade name remains unaltered.

The difference between a good and a poor trade-mark is often equivalent to the difference between a mediocre and a highly successful business.

LEGAL ASPECTS

Rules of Practice in Trade-Mark* Cases

The following rules governing the registration of trade-marks and other marks in the Patent Office, and other proceedings in the Patent Office relating to marks, have been adopted and promulgated under the authority of the Trade-Mark Act of 1946, effective July 5, 1947, and other authority, after publication of proposed rules and a hearing, and consideration of all material and arguments submitted.

In view of the novelty of many of the provisions of the Trade-Mark Act of 1946, it is recognized that changes may be required in these rules from time to time. It is respectfully requested that practitioners working under these rules promptly inform the Patent Office of any proposed changes that appear to be desirable.

These rules were published in the Federal Register for June 19, 1947.¹

CASPER W. OOMS
Commissioner of Patents.

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 - 1.2 Business to be transacted in writing
 - 1.3 Business to be conducted with decorum and courtesy
 - 1.4 Separate letters
 - 1.5 Identification of pending application or registered mark

* The difference between a trade-mark and trade name is that the first refers to a product manufactured and/or sold by a particular firm and the second designates a firm or house which makes or sells the product. However, in this book this distinction is not always made, but the two terms are sometimes used interchangeably.

¹ In the Federal Register and in the Code of Federal Regulations these rules are Part 100 of Title 37 and the individual rules, there called sections, are numbered with 100 prefixed to the numbers here used, with the decimal point following the 100.

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1. GENERAL INFORMATION

1.1 All communications to be addressed to Commissioner of Patents. All letters should be addressed to "The Commissioner of Patents, Washington 25, D. C."

1.2 Business to be transacted in writing. All business with the Patent Office should be transacted in writing. Personal appearance is unnecessary. The action of the Office will be based exclusively on the written record. No recognition will be given to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

1.3 Business to be conducted with decorum and courtesy. Applicants and their representatives will be required to conduct their business with the Patent Office with decorum and courtesy. Papers presented in violation of this requirement will be submitted to the Commissioner and will be returned by his direct order. Complaints against Examiners and other employees must be made in communications separate from other papers.

1.4 Separate letters. A separate letter should, in every instance, be written in relation to each distinct subject of inquiry.

1.5 Identification of pending application or registered mark. A letter relating to a pending application should identify it by the name of the applicant and the serial number and filing date of the application. A letter relating to a registered trade-mark should

identify it by the name of the registrant and by the number and date of the certificate.

1.6 Times for taking action expiring on Sunday or holiday. Where the last day for taking any action falls on Sunday or on a holiday within the District of Columbia, the action may be taken on the next succeeding secular or business day.

1.7 Inquiries. The Patent Office cannot undertake to respond to inquiries whether certain trade-marks have been registered, or, if so, to whom, or for what goods; nor can it give legal advice or advice as to the registrability of a specified mark or the nature and extent of the protection afforded by the law, except as questions may arise in connection with pending applications. Information of a general nature may be furnished either by answering the inquiry or by providing or calling attention to an appropriate publication.

2. FEES AND PAYMENT OF MONEY

2.1 Fees and charges. The following is the schedule of fees and charges to be paid to the Patent Office:

(a) On filing each original application for registration of a mark in each class on either the Principal or the Supplemental Register	\$25.00
(b) On filing each application for renewal in each class	25.00
(c) On filing each application for renewal in each class after expiration of the registration, additional . . .	5.00
(d) On filing notice of claim of benefits of the act of 1946 for a mark to be published under section 12 (c) thereof	10.00
(e) On filing notice of opposition or petition for cancellation	25.00
(f) On appeal from the Examiner of Trade-Marks to the Commissioner	25.00
(g) On appeal from the Examiner of Interferences to the Commissioner	25.00
(h) For issuance of a new certificate of registration following change of ownership of a mark or correction of a registrant's mistake	10.00

Legal Aspects

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(i)	For certificate of correction of registrant's mistake	10.00
(j)	For filing disclaimer, amendment, surrender, or cancellation after registration.....	10.00
(k)	For manuscript copies, for every one hundred words or fraction thereof.....	0.10
(l)	For comparing other copies, for every one hundred words or fraction thereof.....	0.05
(m)	For certification of copies in any case, additional	1.00
(n)	For each additional registration or application which may be included under a single certification, additional	0.50
(o)	For recording every assignment or other paper not exceeding six pages.....	3.00
	For each additional two pages or less.....	1.00
	For each additional registration or application included, or involved in one writing, where more than one is so included or involved, additional	0.50
(p)	For abstracts of title:	
	For the search, one hour or less, and certificate	3.00
	Each additional hour or fraction thereof.....	1.50
	For each brief from the digest of assignments of two hundred words or less.....	1.00
(q)	For title reports required for Office use.....	1.00
(r)	For a single printed copy of statement and drawing	0.10
(s)	For certificate that trade-mark has not been registered, search and certificate (for deposit in foreign countries only).....	3.00
(t)	For certified copies of certificates of registration:	
	For each copy of printed statement and drawing	0.10
	For each grant (certificate of registration)....	1.00
	For the certification.....	1.00
	For each additional registration which may be included under a single certification, additional	0.50

	If renewed, for copy of each certificate of renewal	1.00
(u)	For photostat copies of records and papers, per sheet	0.20
(v)	For photoprints of drawing.....	0.20
(w)	For making drawings, when they can be made by the Patent Office, the cost of making the same, minimum charge.....	5.00
(x)	For correcting drawings, 20 cents for photoprint of uncorrected drawing, and the cost of making correction, minimum charge for making the correction	1.00

2.2 Method of payment. All payments of money required for Patent Office fees must be made in United States specie, Treasury notes, national bank notes, post office money orders or postal notes payable in Washington, D. C., or certified checks. Money orders and certified checks must be made payable to the Commissioner of Patents. If sent in any other form the Office may delay the credit until collection is made. Remittances from foreign countries must be payable and immediately negotiable in the United States for the full amount of the fee required. Money sent by mail to the Patent Office will be at the risk of the sender; letters containing money should be registered.

2.3 Refunds. Money paid by actual mistake or in excess, such as a payment not required by law, will be refunded, but a mere change of purpose after the payment of money, as when a party desires to withdraw his application for the registration of a mark or to withdraw an appeal, will not entitle a party to demand such a return. Amounts of ten cents or less will not be returned unless specifically demanded, nor will the payer be notified of such amount; amounts over ten cents but less than one dollar may be returned in postage stamps, and other amounts by check.

3. RECORDS AND PUBLICATIONS OF THE PATENT OFFICE

3.1 Printed copies of registered marks available. After a mark has been registered, printed copies of the statement, with a

copy of the drawing, will be furnished by the Patent Office upon the payment of the fee therefor.

3.2 Registration files open to public inspection. After a mark has been registered, or published for opposition, the file of the application and all proceedings relating thereto are available for public inspection and copies of the papers may be furnished upon paying the fee therefor.

3.3 Assignment records open to public inspection. The assignment records are open to public inspection and copies of any assignment recorded may be obtained upon payment of the fee therefor. An order for a copy of an assignment should give the liber and page of the record. If identified only by the name of the applicant and serial number, or by the name of the registrant and registration number, an extra charge will be made for the time consumed in making a search for such assignment.

3.4 Certified copies. Copies of records, books, papers, or drawings belonging to the Patent Office relating to marks and copies of certificates of registration, authenticated by the seal of the Patent Office and certified by the Commissioner, or in his name by a chief of division duly designated by the Commissioner, will be furnished by the Patent Office to any person entitled thereto upon payment of the fee for the copies and for the authentication certificate.

3.5 Official Gazette. The Official Gazette of the United States Patent Office is published weekly and contains, in addition to the material relating to patents, information relating to trade-marks, including the text or digest of opinions in trade-mark cases. It includes:

(a) A list of marks published for opposition, with a reproduction of and information concerning each mark.

(b) A list of marks registered on the Principal Register and under the act of 1905.

(c) A list of registrations cancelled.

(d) A list of marks registered on the Supplemental Register and under the act of 1920, with a reproduction of and information concerning each mark.

(e) A list of registrations renewed.

(f) A list of marks republished under section 12 (c) of the Trade-Mark Act of 1946, with a reproduction of each mark.

(g) A list of registrations amended, surrendered, disclaimed, or corrected in accordance with section 7 (d), (f) and (g) of the act with a statement of any change in the registration.

Single copies and subscriptions are sold by the Superintendent of Documents, Government Printing Office, Washington, D. C. Part of the trade-mark material is reprinted separately in a trade-mark leaflet which may be purchased or subscribed to separately.

3.6 Annual trade-mark index. An annual index of trade-marks registered is published, and sold by the Superintendent of Documents.

3.7 Pamphlet of trade-mark laws and rules. Pamphlet copies of trade-mark laws and rules, and of general information concerning trade-marks, are furnished without charge by the Patent Office.

4. ATTORNEYS AND REPRESENTATION BY ATTORNEYS

4.1 Applicants may be represented by an attorney. The owner of a trade-mark may file and prosecute his own application for registration of such trade-mark, or he may be represented by an attorney or other person authorized to practice in trade-mark cases. The Patent Office cannot aid in the selection of an attorney or agent.

4.2 Persons who may practice before the Patent Office in trade-mark cases. Attorneys at law in good standing admitted to practice before the Supreme Court of the United States, the United States Court of Customs and Patent Appeals, or the highest court of any State or Territory of the United States or of the District of Columbia, and persons registered to practice in the United States Patent Office in patent cases (Patent Rule 17) may practice before the Patent Office in trade-mark cases.

Attorneys at law. No register of attorneys who may practice before the Patent Office in trade-mark cases is maintained, and no application by an attorney at law for admission to practice is

required. A statement in the power of attorney, or in an accompanying paper, of the bar to which the attorney at law is admitted is required, and recognition is limited to each case.

Attorneys and agents registered at the Patent Office. Persons or firms, including attorneys at law, who are registered to practice before the Patent Office need only specify the registration number in the power of attorney.

Special recognition. No persons other than those hereinabove mentioned will be permitted to practice before the Patent Office in trade-mark cases unless specially and formally recognized by the Commissioner of Patents, but any person may appear for himself in a proceeding to which he is a party, or for a firm of which he is a member, or for a corporation or association of which he is an officer and which he is authorized to represent, if such firm, corporation, or association is a party to the proceeding.

Refusal of recognition for cause. Persons entitled to be recognized under this rule may, nevertheless, be refused recognition for cause.

4.3 Professional conduct. Attorneys at law and other persons appearing before the Patent Office in trade-mark cases must conform to the standards of ethical and professional conduct generally applicable to attorneys before the courts.

4.4 Advertising. The use of display advertising, circulars, letters, cards, and similar material to solicit trade-mark business, directly or indirectly, is forbidden as unprofessional conduct, and any person engaging in such solicitation, or associated with or employed by others who so solicit, shall be refused recognition to practice before the Patent Office or suspended or excluded from further practice.

The use of simple professional letterheads, calling cards, or office signs; simple announcements necessitated by opening an office, change of association, or change of address, distributed to clients and friends, and insertion of professional cards, listings in common form (not display) in a classified telephone or city directory, and listings and professional cards with biographical data in standard professional directories are not prohibited.