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TRADEMARK BASICS

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719.381.1708 | fax: 719.466.8098 | info@BLSpeer.com | www.BLSpeer.com
29 EAST MORENO AVENUE, COLORADO SPRINGS, CO 80903 -3915

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DISCLAIMER!

- This may be boring
- You may not learn anything
- If you learn something, it'll probably be enough to make you dangerous
- This is **NOT** legal advice

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IDEAS AND CONCEPTS

- Are *not protectable* in and of themselves
- Legal protection extends to the *tangible expression* of ideas and concepts
- This tangible expression is known as *Intellectual Property* ("IP")

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INTELLECTUAL PROPERTY

- **What?**
 - *Tangible Expression* of creative human endeavor
 - *Protected by*
 - *Patents*
 - *Trademarks*
 - *Copyrights*
 - *Trade Secrets*




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Can I Patent a Trademark For a Copyright?

NO, because:
Terms *patent*, *trademark* and *copyright* are not synonyms, but distinct intellectual property rights

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Intellectual Property...

- Transportation Analogy
 - Cars drive on land 
 - Ships sail on water 
 - Planes fly in air 
 - Hydroplanes travel on water and in air 

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Intellectual Property...

- **Patents** → Inventions or Discoveries
- **Trademarks** → Indicators of Source
- **Copyrights** → Original Works
- **Trade Secrets** → Confidential Information


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TRADEMARKS

- **What?**
 - **Trademark:** Indicator of source or origin of a good or service
 - Trademarks may consist of:


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Words



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Phrases




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Designs



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Combinations Thereof



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Scents, Sounds & Colors

- **Scent**
 - Smead
 - Vanilla and others for office supplies
- **Sound**
 - NBC
 - Chimes for broadcasting services
- **Color**
 - Owens Corning
 - Pink for insulation

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Trademarks...

- **Proper Format**
 - *Always* use as an **ADJECTIVE**
 - Trademark brand noun
 - **Big Chief**[®] brand writing tablet
 - **Not** as a **noun**
 - Please make a Xerox of this document.
 - **Not** as a **verb**
 - Let's go rollerblading in the park.

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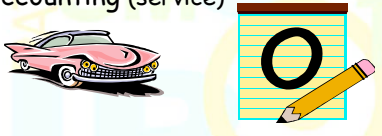
Trademarks...

Types of Trademarks in order of Ascending Legal Strength...

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Generic Trademarks


- Common name of good or service
 - Car (good)
 - Accounting (service)



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Descriptive Trademarks

- Describes nature or quality
 - Half Price Books[®] (new & used bookstore)



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Suggestive Trademarks


- Suggests nature or quality
 - Coppertone[®] (nice tan)
 - Edge[®] (close shave)



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Arbitrary Trademarks


- Intrinsic meaning, unrelated context
 - Apple® (computers for educational market)
 - BlackBerry® (multi-purpose electronic device)



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Coined/Fanciful Trademarks

- Invented
 - Kodak® (film, imaging)
 - Xerox® (reproduction machines)



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Trademarks...

- **What?**
 - *Exclusive right* to use trademark with *particular* goods and services.

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Trademarks...

- **Where?**
 - *Common Law Usage:* Demonstrated territory
 - *State Registration:* State border
 - *Federal Registration:* National border

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Trademarks...

- **How Long?**
 - *Common Law Usage:* As long as continuously used
 - *State Registration:* Usually 5-10 years (subject to renewal and continuous use)
 - *Federal Registration:* 10 years (subject to renewal and continuous use)

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Trademarks...

- **Public Domain?**
 - *No longer in continual use*
 - At least 3 years of non-use

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Trademarks...

- **Marking?**
 - MARK® (*Federal* Registration)
 - MARK™ (*State* Registration and/or *Common Law* Usage)

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Trademarks...

- **Acquisition of Rights?**
 - Upon *use* of the mark in *commerce*
 - US Patent & Trademark Office
 - Secretary of State

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Trademarks...

- **Acquisition of Rights...**
 - **Registration not required, but**
 - Proof of *rights*
 - Proof of *ownership*
 - Public *record*

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Trademarks for Creatives?

- **Company**
 - Studio
 - Publishing Imprint
- **Titles**
 - Series of books
- **Product Line**

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Trademarks...Practice Pointers

- **Clearance before launch**
 - Do-overs are expensive
- **Pick a good mark**
 - Legally weak marks are hard to protect
- **Genericide**
- **DIY** can be detrimental

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QUESTIONS

- **ANSWERS**
 - The Answer to Life, the Universe and Everything is "42"
 - Douglas Adams, *Life, the Universe and Everything* (*Hitchhiker's Guide to the Galaxy* Trilogy)
 - "It Depends"
 - Universal legal answer