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PATENT PENDING  
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## © client corner

### This month's featured client: *Madge Walls*



What's it like growing up in Hawaii? Or handling an impossible daughter, alone, while navigating the strangest sale of one's real estate career on Maui?

Madge Walls, now of Colorado Springs, addresses these questions in her novel, [Paying the Price](#), recipient of the Hawaii Book Publishers Association's Reader's Choice Award in 2006, and an Award of Merit from the Colorado Independent Publishers Association.

Walls participates in reading group discussions of [Paying the Price](#) across the country. She speaks on "Realtors in Fiction: Not a Pretty Picture" at real estate brokerages and associations, and frequently addresses Rotary and other service clubs. She is also a freelance back-of-the-book indexer.

## THE TRADEMARK ALPHABET— R (®), S (SM) AND T (TM)

Last month's article discussed the differences among an entity name, a trade name and a trademark. This month, we'll take a closer look at what a trademark is with a brief primer on trademark law.

**What is a trademark?** The purpose of a trademark is to indicate the source or origin of a good or service. A trademark may be a word, symbol, name, device or any combination thereof. A trademark owner has the exclusive right to use his trademark in conjunction with his particular goods and services.

In the United States, **trademark rights begin to accrue as soon as you use your mark** in commerce in connection with your goods and services. This is known as **common law use** and in this instance your trademark rights will extend only to those geographic areas in which you can prove active trade in commerce has occurred. The next rung up the ladder of trademark protection is a state trademark registration.

A **state trademark registration** may be obtained for each state in which the mark is used in commerce and carries the evidentiary presumption that you are using your mark throughout the state(s) in question. Provided you are trading in interstate commerce (doing business in at least two states), you can go to the top rung of the ladder of trademark protection and pursue a **federal trademark registration**, which carries the evidentiary presumption that you are using your mark throughout all 50 states and the US territories.


**Trademarks should be appropriately**

[Paying the Price](#) is available at Amazon.com and at <http://payingthepricebook.com>. For indexing, see <http://allskyindexing.com>

## stuff and such

Some of you know that I play French horn with the Pikes Peak Philharmonic civic orchestra here in Colorado Springs. I'll be blowing my own horn (bad pun intended) in our upcoming concert on Sunday, February 10, 2008, at 3:00 p.m. at First United Methodist Church (420 North Nevada). Tickets are available at the door. For a mere \$9.00 (adult ticket), you get to hear us play Hungarian March by Berlioz, Capriccio Italien by Tchaikovsky, Symphony No. 104 "London" by Haydn and Piano Concerto No. 1 by Mendelssohn, plus there's a post-concert punch and cookies reception with the musicians! Visit our website at [www.pikespeakphil.org](http://www.pikespeakphil.org) for more information. I hope to see you at the concert!

Want to know what else is happening on the arts and culture scene in the Pikes Peak region? Check out [www.PeakRadar.com](http://www.PeakRadar.com) for the scoop on events and to sign up for the weekly e-mail blast.



## quote

*"Music is enough for a lifetime, but a lifetime is not enough for music."*

**marked with notice of ownership.** This is where the trademark alphabet comes into play. A **federally registered trademark** is marked with the **circle R symbol, ®**.

Trademarks subject to either common law use rights or a state registration(s) are marked with either **SM (indicating a service mark)**, or another way of saying a trademark which is used in connection with services) or with **TM (indicating a trademark)** which is used in connection with goods). To use ® in connection with a trademark, you must have a federal registration. The use of **SM** or **TM** in connection with a trademark requires either common law use of the mark or a state registration.

Only trademarks which are descriptive, suggestive, arbitrary or fanciful (in order of increasing legal strength of a trademark) are entitled to legal protection. **Generic terms** (the word for the good or service itself) are not entitled to trademark protection, because these terms must remain available for all to use in identifying their goods or services. Examples of generic terms are telephone, car, dry-cleaning, etc.

The legal strength of a trademark is often inversely related to the appeal of the trademark to your marketing team. Why? Because of the ability of the trademark to instantly convey to a consumer what the good or service is. As you'll see in the discussion which follows, descriptive marks require no consumer education, suggestive marks require some consumer education and arbitrary or fanciful marks often require extensive consumer education. The marketing plus of a legally strong trademark though is the increased value and heightened awareness in the marketplace of your brand.

A **descriptive trademark** describes the nature or quality of the goods or services and is subject to limited legal protection; provided the owner can demonstrate the trademark has secondary meaning, meaning the public has come to identify the descriptive trademark with a particular source. An example of a descriptive

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trademark is Half Price Books<sup>®</sup> for retail store services featuring books. See the immediate connotation to the consumer? Inexpensive books. No explanation needed.

A **suggestive trademark** suggests the nature or quality of the goods or services. Examples of suggestive trademarks are Coppertone<sup>®</sup> suntan oil and Edge<sup>®</sup> shaving cream. These marks have a less immediate connotation to a consumer, but do readily convey that Coppertone suntan oil will give them a nice, perhaps unhealthy, tan and that Edge shaving cream will give them a smooth, close shave.

An **arbitrary trademark** applies an existing term with intrinsic meaning in a different context. Examples are Apple<sup>®</sup> computers and Palm<sup>®</sup> PDAs. Without the advertising campaigns that went along with these product launches, the consumer would have no idea what either an Apple or a Palm were. These trademarks were worth the effort and, as a result, are very strong marks in the marketplace. We all have a different perception of an Apple computer versus a Dell<sup>®</sup> PC and of a Palm versus a Blackberry<sup>®</sup>.

A **fanciful trademark** is coined anew for use as a trademark: it is a word that didn't exist before. Examples are Exxon<sup>®</sup> gasoline and Kodak<sup>®</sup> film. Imagine the consumer education that Kodak had to undertake when it went into business—not just for its Kodak brand, but also for the film and photography industry. Again, the effort was worth it: look at how strong its brand and trademark are today.

**A trademark should always be used as an adjective**, never as a noun, verb, plural or possessive. Trademarks are properly recited as: brand . In common parlance, the word “brand” may be dropped, but the trademark should still be paired with a noun. For example, you blow your nose into a Kleenex<sup>®</sup> brand tissue or wear a pair of Levi's<sup>®</sup> jeans. Conversely, you don't Rollerblade<sup>®</sup> in the



park (misuse as a verb; proper use would be skating with a pair of Rollerblade in-line skates), and you don't make a Xerox<sup>®</sup> of a document (misuse as a noun; proper use would be making a copy with a Xerox photocopier).

**It is the responsibility of the trademark owner to maintain and enforce his trademark rights.** If he doesn't, he risks losing those rights. There are no trademark police. You alone are responsible for ensuring your trademark is used properly and enforcing your trademark rights against infringers.

*Brenda Speer has been practicing law since 1989 and has honed her area of emphasis, intellectual property law (patent, trademark and copyright), through both private law firm practice and in-house legal department service. In October 2004 she re-entered private law practice in Colorado Springs, Colorado, as a solo practitioner and provides legal counsel to artists, entertainers, innovators and companies in the creative, technological and business arts. Her passion is protecting the creative works, inventions, proprietary information and trade identities of her clients. Contact Brenda at 719.381.1708.*

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