

What's in a trademark?

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When a person thinks of a trademark, he or she generally thinks of a brand name or a logo that is used to represent the trademark owner's goods. Classic examples of such trademarks would be the Nike "swoosh" design or the multicolored E-bay mark. Although these types of marks are common, trademark protection is not exclusive to such names and designs.

As defined by the U.S. Patent and Trademark Office, a trademark is a word, phrase, symbol, or design or a combination thereof that identifies and distinguishes the source of the goods of one party from those of others. Thus, a myriad of unique and identifying features can be the subject of trademark protection, such as sounds, colors, shapes, and even scents/smells. NBC®,

for example, has trademarked a sequence of chime-like sounds to identify the broadcasting of television programs exclusive to NBC®. The classic example of a trademark shape has often been the Coca-Cola® bottle and recently, the Apple® iPod® has received a registration of its overall design.

The issue of whether a unique feature can be the subject of trademark protection is complex. The feature must be nonfunctional and must serve properly as a source identifier. In selecting a trademark, it is often advantageous to consult with an attorney familiar with trademarks issues to ensure that the mark you are selecting is a strong and distinctive mark suitable for trademark protection. Once an appropriate trademark is applied for and registered, that registration does not expire so long as the mark is properly renewed and consistently used in commerce. Thus, a trademark registration that continues to gain recognition by consistent use in commerce is often a most valuable asset for goods and service providers.

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