

**PROTECTING YOUR INTELLECTUAL
PROPERTY
FOR NEXT TO NOTHING**

(How to avoid and save your company fees in protecting your
trademarks, trade secrets, and copyrights)

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PROTECTING YOUR INTELLECTUAL PROPERTY
FOR NEXT TO NOTHING

I. INTRODUCTION

A. Welcome

B. Importance and Value of Intellectual Property

1. Trademarks and service marks

a. Prevention of Deception in the Marketplace

(1) It prevents consumer confusion as to the source of origin of a product/service, its sponsorship or its quality

(2) It shields the consuming public from misleading information

(3) It protects the trademark owner's good will and reputation

(4) It prevents the unjust enrichment of a trademark infringer

b. Protection of Value

(1) It provides an economic incentive for product development and marketing

(2) It protects against the dilution of the mark's distinctiveness resulting from unauthorized use

(3) It protects the mark from tarnishment

2. Copyrights

(a) “[The limited grant of copyright protection] is intended to motivate the creative activity of authors and inventors by the provision of a special reward, and to allow the public access to the products of their genius after the limited period of exclusive control has expired.” Sony Corp. v. Universal City Studios, Inc. (1984) 464 U.S. 417, 429

(b) “The economic philosophy behind the clause empowering Congress to grant patents and copyrights is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors in ‘Science and useful Arts.’” Mazer v. Stein (1954) 347

U.S. 201, 219.

- (c) This economic basis differs from the European view of copyright protection as an inherent inalienable personal right of the creator of a work.

II. HOW TO IDENTIFY YOUR INTELLECTUAL PROPERTY

A. Categories of Intellectual Property

1. Patents

a. Generally

- (1) Patents, unlike other forms of intellectual property, depend on the precise legal description of the protected subject matter in a government grant.
- (2) Therefore, unlike the other areas of intellectual property we will be discussing today, an attorney, more specifically a patent attorney, should be consulted as the claims define the subject matter protected by a patent in the same way as does a legal description in a deed of real property.
- (3) There are two types of patents, utility patents and design patents.

b. Utility Patent

- (1) Protects utilitarian or functional features of an object
- (2) Specific subject matter – products, processes, machines, devices, composition of matter and improvements
- (3) Must meet standards of utility, novelty and originality
- (4) Invention must be described in the Patent Office filing so that person of ordinary skill in the art may practice the invention.
- (5) Protection – prevents others in the country from making, using or selling the functional (or utilitarian) features of the product. Formerly 17 years from the date of issuance; now 20 years from date of application. Importing of infringing item also prohibited.

b. Design Patent

- (1) Protects against copying the appearance of a product for 14 years

c. Examples

- (1) Typical patentable subject matter might be a new machine or device (such as a motor or integrated circuit), a new process for manufacturing a semiconductor chip, or a new composition of matter (such as a chemical or bioengineered life form).
- (2) Fundamental scientific principles, such as the law of gravity are not patentable nor are abstract algorithms, mathematical principles or formulae or (apart from the particular apparatus or process used to implement them) new business ideas.

2. Copyrights

a. Generally

- (1) In contrast to patents which generally protect technology, copyrights are intended to protect recorded creative expressions.
- (2) The subject matter of copyright protection is “original works of authorship fixed in any tangible medium of expression.”
- (3) Idea/Expression Dichotomy
 - (a) Only protects the “expression”
 - (b) Does NOT protect the idea, principle, theme or facts represented or embodied in recorded expression. Only the form of the expression is protected.
- (4) Protection against publishing of a “substantially similar” work
- (5) Criminal and Civil Penalties for infringement, etc.

b. Examples

- (1) Books, magazine articles, speeches, music, motion pictures, other audiovisual works, computer programs, computer

databases, sculpture, other works of fine art, and poetry, to the extent they are recorded.

- (2) Copyright has little to do with the manner in which these works are fixed in a tangible medium, but it covers their recorded expression, regardless of the medium in which they are fixed.
- (3) For example, a novel is still a novel and protected by copyright whether it is recorded in the form of a manuscript, typescript, computer diskette, printed pages, laser disk, etc.

3. Trademarks/Service Marks/Trade Dress

a. Generally

- (1) A trademark or service mark is a particular word, phrase, symbol, design, sound, smell or color or any combination of these elements, which is used to identify the source or origin of a product or service
- (2) Trade dress refers to the design, packaging and manner of sale of products and services.

b. Protection against “confusingly similar” marks

- (1) KEY: does NOT protect products themselves from being copied

c. Law permits “intent to use” registration of marks prior to actual use in commerce

d. Examples

- (1) Coke, Pepsi, Microsoft, Palm, Apple

4. Trade Secrets

a. Generally

- (1) Information not readily available to others that provides actual or potential competitive advantage
- (2) Virtually any information or expression, whether or not recorded, qualifies for trade secret protection if its limited availability gives it economic value and it is reasonably guarded.

- (3) Not limited to scientific or technological information and may include business and financial information such as costs, preferred suppliers, prices and customer lists
 - (4) Such things as formulae for materials, recipes, production processes, compilations of information, computer programs, etc. may be trade secrets
 - b. Approximately 42 states have adopted the Uniform Trade Secrets Act (California has adopted this Act commencing with Civil Code §3426)
 - c. Under UTSA, three criteria
 - (1) information must be used in business
 - (2) information must provide actual or potential economic value or advantage
 - (3) information must be secret – relative, not absolute (“not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy” (Civil Code §3426.1(d)(1) & (2))
 - d. Misappropriation of trade secrets is prohibited
 - (1) Injunction
 - (2) In a number of states, trade secrets misappropriation is a crime (California Penal Code §499c)
 - (3) Under the Theft of Trade Secrets Act (18 U.S.C. § 1832), misappropriation of trade secrets related to or included in a product that is produced for or placed in interstate or foreign commerce may be subject to criminal penalties, forfeiture, and injunctive relief
 - e. Differences between other intellectual property
 - (1) Neither patents nor copyrights protect ideas in the abstract
 - (a) Patents do not protect ideas in the abstract, but only as embodied in particular devices, processes, or compositions of matter, and then only as described

in the patent

(b) Copyrights do not protect ideas at all, but only the manner in which they are expressed.

(c) Trade secret law therefore covers this gap.

f. Disadvantages

(1) cannot coexist with patent protection because the description of a patented invention in the patent application is designed to make the invention accessible to the public at the time the patent issues.

(2) trademark protection is also incompatible because the essence of trademark protection is public exposure and public recognition of the mark or protected feature.

B. California Twists

1. Restrictive Covenants

a. General Rule in most jurisdictions is they are valid if reasonable as to territory, duration and scope of subject matter

b. California Law – statute generally voids restrictive covenants

(1) Business & Professions Code §16600 “[E]very contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void”

(a) Generally invalidates restrictive covenants

(b) Strong public policy – A California employer may hire an employee away from a non-California employer even when the restrictive covenant is specifically governed by and is valid under non-California law. The Application Group, Inc. v. The Hunter Group, Inc., 61 Cal.App.4th 881

(c) Two Judicial Exceptions – (1) Restriction bars person from pursuing only a small or limited part of the business, trade or profession, or (2) Restriction is necessary to protect trade secrets. IBM v. Bajorek (9th Cir. 1999) 191 F.3d 1033; D’Sa v. Playhut, Inc. (2000) 85 Cal.App.4th 927; Boughton v. Socony Mobil Oil Co. (1964) 231 Cal.App.2d

188.

(d) Employer non-disclosure and non-solicitation agreements are not per se invalid under California law.

(i) Section 16600 does not invalidate an employee's agreement not to disclose former employer's trade secrets. Metro Traffic Control, Inc. v. Shadow Traffic Network (1994) 22 Cal.App.4th 853.

(ii) Section 16600 does not invalidate agreements not to solicit customers, where necessary to protect trade secrets. Hilb, Rogal and Hamilton Insurance Services of Orange County, Inc. v. Robb (1995) 33 Cal.App.4th 1812 (can prohibit solicitation, but not announcement)

(e) Use of a restrictive covenant in violation of Section 16600 may also violate California's Unfair Practice Act (Business & Professions Code §§17200 et.seq.) The Application Group, Inc. v. The Hunter Group, Inc. (1998) 61 Cal.App.4th 881

(2) Business & Professions Code §16601

(a) Allows non-competition agreement by a person who sells the goodwill of a business or sells all of his or her shares of stock; permits the purchaser to protect itself against competition from the seller

(b) Requiring an employee to resell stock upon termination of employment in an effort to obtain Section 16601 exception to Section 16600 is invalid.

2. Common Law Misappropriation – Theft of Idea

a. “The tort of common law misappropriation requires the following elements: “(1) the plaintiff has invested substantial time and money in development of its “property”; (2) the defendant has appropriated the [property] at little or no cost; and (3) the plaintiff has been injured by the defendant's conduct.” Self Directed Placement Corp. v. Control Data Corp. (9th Cir. 1990) 908 F.2d 462, 467.

3. Breach of Confidential Relationship
 - a. Disclosure of information in confidence – need not be trade secret but “substantially secret” or “novel”
 - (1) Tele-Count Engineers v. Pacific Tel. & Tel. Co. (1985) 168 Cal.App.3d 455. – misappropriation of accounting forms, not trade secret
 - (2) Faris v. Enberg (1979) 97 Cal.App.3d 309 – idea of show, not necessary to have copyright protectability of work
 - (3) “An actionable claim for breach of confidential relationship occurs when: an idea, whether or not protectable, is offered to another in confidence, and is voluntarily received by the offeree in confidence with the understanding that it is not to be disclosed to others, and is not to be used by the offeree for purposes beyond the limits of the confidence without the offeror’s permission.” Self Directed Placement Corp. v. Control Data Corp. (9th Cir. 1990) 908 F.2d 462, 467.
4. California Labor Code §§ 2870 and 2871
 - a. Section 2870 – invalidates general agreements requiring employees to assign patent rights to inventions developed on his/her own
 - b. Section 2871 – employer can require disclosure

III. HOW YOU CAN PROTECT YOUR INTELLECTUAL PROPERTY WITHOUT A LAWYER

A. Trademarks

1. Select a Trademark
 - a. Must be arbitrary or fanciful
 - b. Must not be descriptive or generic.
2. Conduct research to determine if others are using it
 - a. Internet research
 - b. Order search report from a trademark research company

3. Apply to Register your mark
 - a. On State level-- in states where you do business
 - b. On Federal Level—in the U.S. Trademark Office
 - c. If mark only used seasonally (short period of time), maybe no need to register
4. Use mark Properly
 - a. Mark should be properly labeled
 - b. Used consistently
 - c. Limitations should be placed on others' use of the mark
 - d. Presumed abandoned—3 years of non-use
5. Police Mark
 - a. Goal - to prevent others from using your mark and diluting the goodwill
 - b. Conducting periodic Internet searches
 - c. Subscribing to a watch service
6. Enforce Rights in Mark
 - a. Take steps to stop infringers
 - b. May want to contact a lawyer to assist investigate the use and prepare a cease and desist letter
 - c. Need to make sure infringer is a junior user

B. Copyrights

1. ID your copyrights
2. Obtain registration.
3. Use proper designation
4. Limit third party use
5. Police and enforce copyright rights.

6. Respect copyrights of others.
- C. Trade Secrets
1. Identify your trade secrets
 2. Implement Policies to Keep your methods and other proprietary info confidential.
 3. Take precautions—prevent access to formulas, know how, secret recipes
 4. Monitor work force
 5. Ask your lawyer to prepare a confidentiality and non-disclosure agreement
 6. Strategize with your lawyer to limit your trade secrets from becoming public

IV. WHEN YOU MUST HIRE A LAWYER, HOW YOU CAN REDUCE LEGAL FEES

A. Assess value.

1. Assess the value of what you are protecting.
2. For example, your investment should be different for marks, secrets, copyrights that have second or tertiary value to your business.
3. In contrast, it may be a mistake not to devote the resources needed to protect your company's most important intellectual properties, your key brand or valuable trade secrets, as examples.

B. Provide Assistance

1. Take an active interest in your case.
2. Provide full disclosure to your lawyer. Use the benefit of the attorney client privilege. Avoid situations where the lawyer finds out difficult information from the other side.
3. You or your staff can provide information to the lawyer that may reduce the time the lawyer devotes to the assignment.
4. There may be other resources you can provide at lower cost than the lawyer's office. Such as documents, market research, specimens of use and other evidence.

C. Cost Sharing.

1. Investigate and purchase insurance that will cover you or provide a defense for intellectual property claims.
2. Talk to your insurance broker about a policy or endorsements that include coverage for claims of infringement (trademark, copyright, patent, trade secret).
3. Review what is covered; review the exclusions too.
4. Have your lawyer review your insurance policy.
5. You can pay annual premiums for many years, and they still won't equal the amount you would spend/save in defense costs if your insurance defends one major claim.
6. Other parties with a similar interest who may be interested in the issue and willing to share cost.

D. Tender claims to insurance

1. Don't prejudge that claim is not covered.
2. Don't automatically take no for an answer

E. Use Alternative Dispute Resolution

1. Sometimes an answer is as valuable as the "right" answer.
2. Often a sound decision can be provided through dispute resolution outside the court system.
3. Alternative dispute resolution can be much less expensive than litigation.

F. Strategizing

1. When you have an intellectual property dispute, devote the time to strategize with your lawyer.
2. Discuss potential actions, reactions and outcomes.
3. Develop a roadmap of steps to be taken in the event of each possible action, reaction and outcome.
4. Assess the costs of each possible action, and the value that action can generate.

G. Be Practical

1. Make a fair assessment of what you want to accomplish, and what can realistically be accomplished.

H. Adopt a Settlement Strategy

1. Often, a good result can be obtained through settlement, if only the parties will discuss settlement.
2. For example, where infringement is alleged, both sides may prefer to avoid legal fees.
3. Co-existence may be negotiable.
4. Continued use during a transition period may be negotiable.

I. Litigating Carefully.

1. Carefully select the cases that are worth litigating.
2. Use litigation to set examples and precedents.
3. Cut losses. Continuously evaluate disputes. If not proceeding the way you want or need, get out early and cut off the expense.

J. Discuss openly with the attorney what strategies can be used to reduce legal fees.

1. This concept applies to intellectual property and other legal work as well.
2. What work can be performed by associate attorneys or paralegals at lower hourly fees.
3. Will the attorney perform tasks on a fixed fee basis.
4. Take your lawyer to lunch. Chat informally. Your lawyer wants to be your advisor. Look for times and opportunities when you can discuss your matters with the lawyer in an informal setting.
5. Explore contingency vs. hourly fees. Each has their place and benefit.
6. Contingency fees help manage ongoing legal costs. But they can result in a higher overall fee, though it is conditioned on a successful result.

7. Hourly fees mean ongoing legal fees. They can be lower, but they are incurred regardless of the result.

V. CONCLUSION

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Trademarks

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 Electronic forms for submitting Madrid-Protocol related documents are unavailable
TTABVue - view images of Proceeding documents online!

Where do I start? << START HERE!

Basic Facts about Trademarks

PTDLs - Depository Libraries
search resources & support near you

Public Search Facilities at USPTO

Trademarks Customer Outreach
(Over Seminars near you)

Where to send mail ...

Who to call ...

Madrid Protocol for International Registration of Marks
basic procedures and guides, rules, and laws

Trademark Adjustment

SEARCH trademarks

FILE online

Fees, pricing and payments

Forums

Check status

- Respond to office actions
- Respond to Notice of Allowance
- Amendments after publication
- Appeals: (TMEP-1500) or (TBMP-1200)

Petitions guidance
 Petitions information sheet

Opposition to registration (TMEP-1503) or (TBMP)

Search

Search pending and registered trademarks

- TM Official Gazette - weekly publication of items published for opposition & registration certificates
- BUY copies

File online

Change Ownership

File TTAB documents

- Search TTAB Proceedings
locate and check status of Proceedings before the Trademark Trial and Appeal Board (TTAB)
- View TTAB Proceeding documents

Status Check status of pending and registered trademarks

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State of California Secretary of State

REGISTRATION OF TRADEMARK OR SERVICE MARK

Pursuant to Business and Professions Code Section 14230

NOTICE: READ ACCOMPANYING INSTRUCTIONS BEFORE COMPLETING THIS FORM

REGISTRATION APPLICATION FOR:		<input type="checkbox"/> TRADEMARK	<input type="checkbox"/> SERVICE MARK
1. APPLICANT NAME			
2. STREET ADDRESS (PROVIDE CALIFORNIA BUSINESS ADDRESS IF SERVICE MARK)		3. CITY AND STATE	4. ZIP CODE
5. BUSINESS STRUCTURE (CHECK ONE)			
<input type="checkbox"/> LIMITED PARTNERSHIP		<input type="checkbox"/> SOLE PROPRIETOR	
<input type="checkbox"/> LIMITED LIABILITY COMPANY		<input type="checkbox"/> HUSBAND AND WIFE, AS COMMUNITY PROPERTY	
<input type="checkbox"/> GENERAL PARTNERSHIP		<input type="checkbox"/> OTHER (DESCRIBE) _____	
<input type="checkbox"/> CORPORATION (STATE OF INCORPORATION) _____			
6. NAMES OF THE GENERAL PARTNERS, IF APPLICANT IS A PARTNERSHIP		7. NAMES OF MEMBER(S) OR MANAGER(S), IF APPLICANT IS A LIMITED LIABILITY COMPANY	
8. NAME AND/OR DESIGN OF MARK. (FOR DESIGN PROVIDE A BRIEF WRITTEN DESCRIPTION THAT CAN BE PICTURED IN THE MIND WITHOUT REFERENCE TO THE SPECIMENS. DO NOT DRAW THE DESIGN ON APPLICATION)			
DISCLAIMER (IF APPLICABLE) NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE THE TERM:			
9. DATE THE MARK WAS FIRST USED IN CALIFORNIA		DATE THE MARK WAS FIRST USED ANYWHERE	
10. IF A TRADEMARK, LIST SPECIFIC GOODS. IF A SERVICE MARK, LIST SPECIFIC SERVICE.			THIS SPACE FOR FILING OFFICER USE TRADE/SERVICE MARK REG. NO. _____ CLASS NO. _____
CLASS NUMBER _____ (ONE CLASSIFICATION NUMBER ONLY)			
11. RETURN ACKNOWLEDGMENT TO: (TYPE OR PRINT)			
NAME []			
ADDRESS []			
CITY []			
STATE []			
ZIP CODE []			
SEC/STATE LP/TM 101 (REV. 2/97)		FILING FEE: \$70.00	

(OVER)

12. MANNER OF MARK USE.

CHECK ALL THAT APPLY

FOR TRADEMARKS ONLY

- ON LABELS AND TAGS AFFIXED TO THE GOODS.
- ON LABELS AND TAGS AFFIXED TO CONTAINERS OF THE GOODS.
- BY PRINTING IT DIRECTLY ONTO THE GOODS.
- BY PRINTING IT DIRECTLY ONTO THE CONTAINERS FOR THE GOODS.
- OTHER _____

FOR SERVICE MARKS ONLY

- ON BUSINESS SIGNS.
- ON ADVERTISING BROCHURES.
- ON ADVERTISING LEAFLETS.
- ON BUSINESS CARDS.
- ON LETTERHEADS.
- ON MENUS.
- OTHER _____

13. SPECIMENS

CHECK ONE BOX BELOW. ENCLOSE THREE (3) IDENTICAL ORIGINAL SPECIMENS.

FOR TRADEMARKS ONLY

- ACTUAL LABELS.
- ACTUAL TAGS.
- PHOTOGRAPHS OF THE GOODS/CONTAINERS SHOWING THE TRADEMARK.
- FRONT PANELS OF A PAPER CONTAINER BEARING THE TRADEMARK.
- OTHER _____

FOR SERVICE MARKS ONLY

- BUSINESS CARDS.
- ADVERTISING BROCHURES.
- ADVERTISING LEAFLETS.
- MENUS SHOWING THE MARK.
- OTHER _____

14. DECLARATION OF OWNERSHIP

APPLICANT HEREWITH DECLARES THAT HE/SHE HAS READ THE ABOVE AND FOREGOING APPLICATION AND KNOWS THE CONTENTS THEREOF AND THAT THE FACTS SET OUT HEREIN ARE TRUE AND CORRECT AND THAT THE THREE SPECIMENS OF THE MARK SUBMITTED ARE TRUE AND CORRECT, AND TO HIS/HER BEST KNOWLEDGE AND BELIEF NO OTHER PERSON, FIRM, CORPORATION, UNION OR ASSOCIATION HAS THE RIGHT TO USE SAID MARK IN THIS STATE, EITHER IN IDENTICAL FORM OR IN SUCH NEAR RESEMBLANCE THERETO AS MIGHT BE CALCULATED TO DECEIVE OR CONFUSE.

NAME OF CORPORATION/PARTNERSHIP/LIMITED LIABILITY COMPANY (IF APPLICABLE)

SIGNATURE OF APPLICANT



IF PARTNER, MANAGER OR CORPORATE OFFICER, INCLUDE TITLE

TYPE OR PRINT NAME OF APPLICANT

DATE

TYPE OR PRINT THE NAME AND ADDRESS OF THE PERSON OR FIRM TO RECEIVE THE ACKNOWLEDGEMENT OF THE FILING. SEND THE SIGNED APPLICATION WITH ORIGINAL SIGNATURE(S) TO THE SECRETARY OF STATE, TRADEMARK UNIT, P.O. BOX 944225, SACRAMENTO, CA 94244-2250 WITH THE \$70.00 FILING FEE.

State of California Secretary of State

REGISTRATION OF TRADEMARK AND SERVICE MARK

California Business and Professions Code Sections 14200 et seq.

DEFINITIONS

"TRADEMARK means any word, name, symbol, device or any combination thereof adopted and used by a person to identify goods made or sold by that person and to distinguish them from goods made or sold by others." (Section 14207)

"SERVICE MARK means a mark used in the sale or advertising of services to identify the **services** of one person and distinguish them from the services of others." (Section 14206)

"TRADE NAME means a word, name, symbol, device, or any combination thereof used by a person to identify his **business**, vocation or occupation..." (Section 14208) **While trade names are defined in the Trademark Law, California statute does not provide for the filing of fictitious business names at the state level. Fictitious business name statements are required to be filed with the clerk of the county in which the company is doing business pursuant to Business and Professions Code Section 17900.**

GENERAL INFORMATION

All applications must be neatly printed in ink or typewritten. Applications must be legible for registration and microfilming.

When submitting applications, please include a self-addressed, stamped postcard with the name of the mark to be registered. It will be date stamped and returned to you as verification of receipt of the document. **SEND A SEPARATE CHECK FOR EACH APPLICATION.**

Specify in the appropriate space whether the mark is a trademark or service mark. Only one mark may be submitted on each application. Registration of a mark shall be effective for a term of ten years and may be renewed for a like term. The renewal form furnished by the Secretary of State must be submitted within six months prior to the expiration date.

Send the signed application with original signature(s) to the Secretary of State, Trademark Unit, P.O. Box 944225, Sacramento, CA 94244-2250, **WITH THE \$70.00 FILING FEE.** Questions concerning Trademark/Service Mark applications should be directed to (916) 653-4984 between the hours of 8:00 a.m. and 4:30 p.m.

INSTRUCTIONS FOR COMPLETING APPLICATIONS

1-7. APPLICANT INFORMATION

1. Give complete name of owner of mark.
2. List complete street address. **DO NOT** give P.O. Box. If Service Mark, provide a California Business Address.
3. List city and state. **DO NOT** abbreviate the name of the city.
4. Enter ZIP CODE.
5. Identify the business structure of the applicant by checking the appropriate box. If a corporation is the owner, give state of incorporation. A corporation must be in good legal standing in order to register a mark.
6. If the owner is a partnership, list the names of all general partners.
7. If the owner is a Limited Liability Company, list the names of members/managers.

8. NAME AND/OR DESIGN OF MARK

If the mark is a name and a design, provide the name and a brief written description of the design. If the mark is a design only, give a brief written description of the design in the space provided that can be pictured in the mind without reference to the specimens.

- ◆ **DO NOT** paste, tape, or staple a specimen in this space.
- ◆ If the mark is not in English, provide an English translation.

DISCLAIMER

The mark may include a descriptive word or design that must be disclaimed. A disclaimer is an acknowledgment by the applicant of descriptive words in the mark to which no one can claim exclusive right. Should there be a word or words that need to be disclaimed, insert them in the space on the application marked "Disclaimer."

9. FIRST USE

The mark must be in use in this state before it can be registered with this office.

- (a) If a trademark, the goods or products must actually have been sold or otherwise distributed in this state.
- (b) If a service mark, the advertised services must actually be rendered in this state. **THE MERE ADVERTISING OF FUTURE SERVICES OR GOODS DOES NOT CONSTITUTE USE OF A TRADE OR SERVICE MARK.**

10. IDENTIFICATION OF GOODS/SERVICES

If a trademark, specify the type of goods on which the mark is used. If a service mark, list the type of service provided. Do not use terms which describe a general field or category of products or services; be specific.

One or more classes of goods or services may be applicable to the mark. Only one class of goods or services per application. **A SEPARATE APPLICATION IS REQUIRED FOR EACH CLASS.**

If the classification number is not given, the Secretary of State will assign the class number, and will change the number if that furnished by the applicant is not appropriate.

11. RETURN ACKNOWLEDGMENT

Give the name and address of the person or firm to receive the acknowledgment of the filing.

12. MANNER OF MARK USE

How is the mark used? If a trademark, how is it applied to the goods or products? By label or tag or imprinting on the goods or their containers? If a service mark, how is the mark used in advertising? On brochures or business cards?

13. SPECIMENS

Include with the application **three identical original specimens** which show how the mark is used on the goods or in connection with services identified in the application. The specimens should be no larger than 8½ by 11 inches and should lay flat. Specimens which have been altered or defaced in any manner are not acceptable. Do not submit metal of any kind, words typed on cards or sheets of paper or freehand drawings. Computer generated prototypes are not acceptable.

- (a) If a trademark, submit specimens that are affixed to your goods or products. Labels, tags, wrappers, or three clear identical photographs of the goods or products (showing the mark as actually used) are acceptable.
- (b) If a service mark, submit specimens from which the type of service(s) provided can be determined. Envelopes, invoices, letterhead, and matchbooks are not acceptable as specimens. Business cards, brochures, flyers or advertisements are acceptable, if they **identify the nature of the service rendered by applicant.**

14. DECLARATION OF OWNERSHIP

If the applicant is a partnership or a corporation, enter the name as it appears in Item 1.

SIGNATURE

If the applicant is a partnership or a corporation, a partner or an officer of the corporation must sign the application and list his/her title.

If an attorney is signing the application on behalf of a client, please provide a copy of the **POWER OF ATTORNEY.**

Type or print name of applicant.

Indicate the date the application is signed.

FEDERAL PATENTS/TRADEMARKS

The Secretary of State registers trade and service marks used in the State of California. If information concerning federal registration of trademarks, service marks and patents is needed, contact the Commission of Patents and Trademarks, Washington, DC 20231

COPYRIGHTS

For information concerning copyrights, contact the Copyright Office, James Madison Memorial Building, 101 Independence Avenue S.E., Washington, DC 20559.

PTO Form 1478 (Rev 9/98)
 OMB No. 0651-0009 (Exp. 08/31/2004)

Trademark/Service Mark Application, Principal Register

Version 2.11: 11/02/2003

<i>i</i>	<p>Each field name links to the relevant section of the "HELP" instructions that will appear at the bottom of the screen. Fields containing the symbol "*" must be completed; all other relevant fields should be completed if the information is known.</p> <p>Note: <input type="checkbox"/> check here if you do not want the scrolling help to be automatically shown at the bottom of the screen.</p>
	<p>Important: ONCE AN APPLICATION IS SUBMITTED ELECTRONICALLY, THE OFFICE WILL IMMEDIATELY PROVIDE THE SENDER WITH AN ELECTRONIC ACKNOWLEDGMENT OF RECEIPT OF THE APPLICATION. Please contact PrinTEAS@uspto.gov within 24 hours of transmission (or by the next business day) if you do not receive this acknowledgment.</p> <p>Contact Points: For general trademark information, please e-mail TrademarkAssistanceCenter@uspto.gov, or telephone 1-800-786-9199. If you need help in resolving technical glitches, please e-mail PrinTEAS@uspto.gov. Please include your telephone number in your e-mail, so we can talk to you directly, if necessary. For status information on an application that has an assigned serial number, use http://tarr.uspto.gov, or telephone 703-305-8747.</p> <p>NOTE: Do NOT attempt to check status until at least 45 days after submission of a filing, to allow sufficient time for our databases to be updated.</p>

Applicant Information		
<p>Note: This identifies who owns the mark, not necessarily who is filing the application.</p>		
* Name	<p>[If an individual, use the following format: Last Name, First Name Middle Initial./Name]</p>	
<p>Entity Type: Click on the one appropriate circle to indicate the applicant's entity type and enter the corresponding</p>		
<input type="radio"/> Individual	Country of Citizenship	
<input type="radio"/> Corporation	State or Country of Incorporation	
<input type="radio"/> Partnership	State or Country Where Organized	
<input type="radio"/> Limited Partnership		
<input type="radio"/> Joint Venture		
<input type="radio"/> Sole Proprietorship	Name and Citizenship of all General Partners, Active Members, Individual, Trustees, or Executors	
<input type="radio"/> Trust		
<input type="radio"/> Estate		
		Select Domestic Entity

<input type="radio"/> <u>Other</u>	Specify Entity Type	Select Foreign Entity If not listed above, please select 'OTHER' and specify here:
	State or Country Where Organized	
* Address	* <u>Street Address</u>	
	<u>Internal Address</u>	
	* <u>City</u>	
	<u>State</u>	Select State <input type="checkbox"/> If not listed above, please select 'OTHER' and specify here:
	* <u>Country</u>	Select Country <input type="checkbox"/> If not listed above, please select 'OTHER' and specify here:
	<u>Zip/Postal Code</u>	
<u>Phone Number</u>		
<u>Fax Number</u>		
<u>Internet E-Mail Address</u>	<input type="checkbox"/> Check here to <u>authorize</u> the USPTO to communicate with the applicant or its representative. NOTE: While the application may list an e-mail address for the applicant, applicant's attorney, applicant's domestic representative, only one e-mail address may be used for correspondence with Office <u>policy</u> . The applicant must keep this address current in the Office's records.	



Mark Information	
Before the USPTO can register your mark, we must know exactly what it is. You can present a mark in one of two ways: (1) standard character format; or (2) stylized or design format. When you click on one of the two circles below, and follow the specific instructions, the system will automatically create a separate page that displays your mark. Only one mark may be submitted per application.	
WARNING: AFTER SEARCHING THE USPTO DATABASE, EVEN IF YOU THINK THE RESULTS ARE "O.K.," DO NOT ASSUME THAT YOUR MARK CAN BE REGISTERED AT THE USPTO. AFTER YOU FILE AN APPLICATION, THE USPTO MUST DO ITS OWN SEARCH AND OTHER REVIEW, AND MIGHT REFUSE TO REGISTER YOUR MARK.	
<input type="radio"/> Standard Character Format	Click on this circle to register a word(s), letter(s), and/or number(s), or any combination thereof, with no design element and without claim to any particular font style, size or color. Enter the mark here: (Note: The entry can be in capital letters, lower case letters, or a combination thereof.)
<input type="radio"/> Stylized or	Click on this circle to register a stylized word(s); letter(s); number(s); or a design, either by itself or combined with stylized word(s), letter(s), and/or number(s).

<p style="text-align: center;">Design Format</p>	<p>Click on the 'Browse' button to select a properly-sized <u>JPG image file</u> (the only accepted format) from your local drive that shows the complete, overall mark (e.g., the stylized representation of the words; or, for a mark consisting of a design and words, the image of the complete "composite" mark, not just the design element alone). If claiming color, you must submit a color image; otherwise, the image must be clear <u>black-and-white</u>.</p> <p style="text-align: center;"><input type="button" value="Browse"/></p> <p>For any image that also includes a word(s), letter(s), and/or number(s), enter the <u>LITERAL ELEMENT</u> only of the mark here:</p> <p>NOTE: Do not enter any word(s), letter(s), or number(s) that do not appear in the attached image; the image file must reflect the overall mark, consisting of the design and the word(s), letter(s), and or number(s).</p> <p><input type="checkbox"/> Check here if you are claiming that the mark is presented in <u>standard character format</u> without claim to any particular font style, size or color.</p> <p><input type="checkbox"/> Check here if claiming color as a distinctive feature of the mark, and identify the colors (e.g., enter red and blue):</p> <p><input type="checkbox"/> If other than a mark in standard characters, <u>describe the mark</u>, and if appropriate, list the portions of the mark that are in color and the corresponding color for each: The mark consists of:</p>
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Basis for Filing and Goods and/or Services Information					
<input checked="" type="checkbox"/>	<p>Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. §1051(b)).</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; padding: 5px;"> <p style="text-align: center;">International Class</p> </td> <td style="padding: 5px;"> <p><input type="checkbox"/> If known, enter class number 001 - 045</p> </td> </tr> <tr> <td style="padding: 5px;"> <p style="text-align: center;">* <u>Listing of Goods and/or Services</u></p> <p style="text-align: center;"><i>USPTO Goods/Services Manual</i></p> </td> <td style="padding: 5px;"> <p>NOTE: Do not enter a Class Number or any other code in the field below. You must enter only the common commercial name for the specific goods and/or services associated with the mark.</p> </td> </tr> </table>	<p style="text-align: center;">International Class</p>	<p><input type="checkbox"/> If known, enter class number 001 - 045</p>	<p style="text-align: center;">* <u>Listing of Goods and/or Services</u></p> <p style="text-align: center;"><i>USPTO Goods/Services Manual</i></p>	<p>NOTE: Do not enter a Class Number or any other code in the field below. You must enter only the common commercial name for the specific goods and/or services associated with the mark.</p>
<p style="text-align: center;">International Class</p>	<p><input type="checkbox"/> If known, enter class number 001 - 045</p>				
<p style="text-align: center;">* <u>Listing of Goods and/or Services</u></p> <p style="text-align: center;"><i>USPTO Goods/Services Manual</i></p>	<p>NOTE: Do not enter a Class Number or any other code in the field below. You must enter only the common commercial name for the specific goods and/or services associated with the mark.</p>				

Check here if an attorney is filing this application on behalf of applicant(s).

Attorney Information	
<p>Correspondent Attorney Name</p>	

Individual Attorney Docket/Reference Number		
Other Appointed Attorney(s)		
Attorney Address	Street Address	
	Internal Address	
	City	
	State	Select State  If not listed above, please select 'OTHER' and specify here:
	Country	Select Country  If not listed above, please select 'OTHER' and specify here:
	Zip/Postal Code	
Firm Name		
Phone Number		
FAX Number		
Internet E-Mail Address	<input type="checkbox"/> Check here to <u>authorize</u> the USPTO to communicate with the applicant or its representative via e-mail. NOTE: While the application may list an e-mail address for the applicant, applicant's attorney, and/or applicant's domestic representative, only one e-mail address may be used for correspondence, in accordance with Office <u>policy</u> . The applicant must keep this address current in the Office's records.	

Fee Information

Number of Classes Paid

1 

Note: The total fee is computed based on the Number of Classes in which the goods and/or services associated with the mark are classified.

\$ 335 = Number of Classes Paid x \$335 (per class)

* **Amount**

\$ _____

NOTE: Three payment options (credit card, automated deposit account, and Electronic Funds Transfer) will appear after clicking on the PAY/SUBMIT button, which is available on the bottom of the Validation Page after completing and validating this form.

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark

sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Electronic Signature

The application will not be "signed" in the sense of a traditional paper document. To verify the contents of the application, the signatory must enter any alpha/numeric character(s) or combination thereof of **his or her choosing**, preceded and followed by the forward slash (/) symbol. The USPTO does **not** determine or pre-approve what the entry should be, but simply presumes that this specific entry has been adopted to serve the function of the signature. Most signatories simply enter their names between the two forward slashes, although acceptable "signatures" could include /john doe/; /jd/; or /123-4567/. The application may still be validated to check for missing information or errors even if the signature and date signed fields are left blank.

Signature

Date Signed

MM/DD/YYYY

Signatory's Name

Signatory's Position

Click on the desired action:

The "Validate Form" function allows you to run an automated check to ensure that all mandatory fields have been completed. You will receive an "error" message if you have not filled in one of the five (5) fields that are considered "minimum filing requirements" under the Trademark Law Treaty Implementation Act of 1998. For other fields that the USPTO believes are important, but not mandatory, you will receive a "warning" message if the field is left blank. This warning is a courtesy, if non-completion was merely an oversight. If you so choose, you may by-pass that "warning" message and validate the form (however, you cannot by-pass an "error" message).

Note: To either print the completed application, in whole or in part, download and save the validated application, or electronically submit the application to the USPTO, click on the Validate Form button.

Privacy Policy Statement

The information collected on this form allows the PTO to determine whether a mark may be registered on the Principal or Supplemental register, and provides notice of an applicant's claim of ownership of the mark. Responses to the request for information are required to obtain the benefit of a registration on the Principal or Supplemental register. 15 U.S.C. §1051 et seq. and 37 C.F.R. Part 2. All information collected will be made public. Gathering and providing the information will require an estimated 12 or 18 minutes (depending if the application is based on an intent to use the mark in commerce, use of the mark in commerce, or a foreign application or registration). Please direct comments on the time needed to complete this form, and/or suggestions for reducing this burden to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington D.C. 20231. Please note that the PTO may not conduct or sponsor a collection of information using a form that does not display a valid OMB control number.

Copyright Office fees are subject to change. For current fees, check the Copyright Office website at www.copyright.gov, write the Copyright Office, or call (202) 707-3000.



VA VAU
EFFECTIVE DATE OF REGISTRATION

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

Title of This Work ▼ NATURE OF THIS WORK ▼ See instructions

Previous or Alternative Titles ▼

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2

NOTE
Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

a

NAME OF AUTHOR ▼ DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"? Yes No

Author's Nationality or Domicile
Name of Country
OR { Citizen of _____
Domiciled in _____

Was This Author's Contribution to the Work
Anonymous? Yes No
Pseudonymous? Yes No
If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es). See instructions

3-Dimensional sculpture Map Technical drawing
 2-Dimensional artwork Photograph Text
 Reproduction of work of art Jewelry design Architectural work

b

Name of Author ▼ Dates of Birth and Death
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"? Yes No

Author's Nationality or Domicile
Name of Country
OR { Citizen of _____
Domiciled in _____

Was This Author's Contribution to the Work
Anonymous? Yes No
Pseudonymous? Yes No
If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es). See instructions

3-Dimensional sculpture Map Technical drawing
 2-Dimensional artwork Photograph Text
 Reproduction of work of art Jewelry design Architectural work

3

a Year in Which Creation of This Work Was Completed _____ This information must be given in all cases. **b** Date and Nation of First Publication of This Particular Work
Complete this information ONLY if this work has been published. Month _____ Day _____ Year _____ Nation _____

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPLICATION RECEIVED _____

ONE DEPOSIT RECEIVED _____

TWO DEPOSITS RECEIVED _____

FUNDS RECEIVED _____

DO NOT WRITE HERE OFFICE USE ONLY

MORE ON BACK ▶ • Complete all applicable spaces (numbers 5-9) on the reverse side of this page.
• See detailed instructions. • Sign the form at line 8.

EXAMINED BY

FORM VA

CHECKED BY

CORRESPONDENCE
Yes

FOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼

- a. This is the first published edition of a work previously registered in unpublished form.
- b. This is the first application submitted by this author as copyright claimant.
- c. This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼ Year of Registration ▼

5

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

a See instructions before completing this space.

6

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

b

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.
Name ▼ Account Number ▼

7

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼

a
b

Area code and daytime telephone number ()

Fax number ()

Email

CERTIFICATION* I, the undersigned, hereby certify that I am the

- check only one ▶ {
- author
 - other copyright claimant
 - owner of exclusive right(s)
 - authorized agent of _____
Name of author or other copyright claimant, or owner of exclusive right(s) ▲

8

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Date

Handwritten signature (X) ▼

X

Certificate will be mailed in window envelope to this address:

Name ▼
Number/Street/Apt ▼
City/State/ZIP ▼

YOU MUST:

- Complete all necessary spaces
- Sign your application in space 8

SEND ALL 3 ELEMENTS IN THE SAME PACKAGE:

1. Application form
2. Nonrefundable filing fee in check or money order payable to Register of Copyrights
3. Deposit material

MAIL TO:

Library of Congress
Copyright Office
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000

Fees are subject to change. For current fees, check the Copyright Office website at www.copyright.gov, write the Copyright Office, or call (202) 707-3000.

9

*17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.