

Do You Notice Your Trademarks and Copyrights?

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One very simple, but important, part of protecting your rights in your trademarks and copyrights is providing proper notice. Using the proper notice symbols in connection with your trademarks and copyrights puts the world on notice that you are claiming exclusive rights in your intellectual property and can serve a very valuable evidentiary purpose should you have to enforce your rights against others.

We encounter trademark notices (symbols such as TM, SM, and ®) and copyright notices (the © symbol and those disclaimers at the beginning of a movie or the end of a broadcast) on a daily basis, but many do not fully understand when they should be used or why they are so important.

For trademarks, the primary purpose of using a TM, SM, or ® symbol is to show competitors that the owner is asserting rights in its mark and to let consumers know that the mark is an identifier of the source of a product or service. This can help to set the mark apart from surrounding content on a product's packaging, in an advertisement, on a website, or wherever the mark may be used. While it is not mandatory that an owner uses a notice symbol, failing to do so may limit the remedies that are available to the owner should the need to enforce his or her rights ever arise. Perhaps most importantly, failure to provide notice can limit or preclude monetary damages.

It is very important to use trademark notice symbols properly. Using the ® symbol is only appropriate if the mark is registered with the U.S. Patent and Trademark Office (USPTO). The ® symbol cannot be used with marks that are registered in individual States. If an owner of a mark uses the ® symbol prior to obtaining a registration certificate for that particular mark, the USPTO can refuse to register the mark. Prior to obtaining a registration certificate, the owner of a mark can, and should, use the TM or SM symbol. TM is appropriate for trademarks that are used on goods and SM is appropriate for service marks used in connection with services.

For copyrights, providing notice serves a similar purpose to trademarks. It makes others aware of the fact that the owner of the copyrighted work is asserting his or her exclusive rights in that work. Providing copyright notice also prevents a potential infringer from successfully raising a defense of innocent infringement, which could greatly reduce the owner's damages and limit his or her remedies.

Unlike trademarks, however, copyrights protect original creative works, and there is no requirement that the works be sold in commerce in order to acquire rights. Instead, copyright rights exist at the moment a work is created, and the owner can, and should, begin providing notice as soon as copies of the work are made available to others. There are several ways to properly notice a copyrighted work. One is to print the © symbol (or the word "Copyright"), together with the owner's name (which can be a pseudonym or stage name) and year of creation. For

motion pictures, television shows, or other audiovisual works, a copyright notice should be included with or near the title, during the rolling of credits, or at the very beginning or end of the work. For computer-based works, copyright notice can be displayed in several ways, including appearing on the end user's device at sign-on or being displayed continuously on the user's device while the program/app/software, etc. are in use.

Taking these simple steps and can prove remarkably beneficial in the long run. Ensuring that your company's trademarks and copyrights are properly noticed should be a part of your business's overall intellectual property procedures.

If your institution has questions or concerns about this topic and you would like further information, please email Karen I. Levin at klevin@cullenanddykman.com