Trademark protection is available for certain names, symbols, devices, or words that will be used in connection with a good or service. Technically, if a certain mark is associated with a service, it is called a "service mark," but [trademark](http://smallbusiness.findlaw.com/intellectual-property/trademarks.html) is commonly used to refer to both marks associated with services and goods. The purpose behind trademarks is to allow companies and individuals to indicate the source of their goods or services and to distinguish them from others in the industry.

What Do Trademarks Do?

A trademark not only gives the trademark owner the exclusive right to use the mark, but also allows the owner to prevent others from using a similar mark that can be [confusing](http://smallbusiness.findlaw.com/intellectual-property/the-likelihood-of-confusion-test.html) for the general public. A trademark cannot, however, prevent another person or company from making or selling the same goods or service under a clearly different mark. Rights to a mark can be established through the legitimate use of the mark in a commercial or business setting.

When a person claims the rights to a particular mark, he or she is allowed to use "TM" (for a trademark) and "SM" (for a service mark) to designate that the mark is trademarked. The symbol "®" designates federal registration and can therefore only be used after the USPTO registers the mark, meaning the symbol cannot be used when an application is pending. In addition, the ® symbol may only be used with [goods and/or services that were listed](http://smallbusiness.findlaw.com/intellectual-property/identification-of-specific-goods-services.html) in the federal trademark application.

**Following are the essential features of a Trademark**

It must be distinctive. Distinctiveness can be inherent or acquired. Inherent distinctiveness means that it is distinct in itself and no one can justifiably claim its use. Acquired distinctiveness means that it has acquired distinctiveness through use.

It must be a non-descriptive word. In other words, it can be a word other than an invented word whether it is already existing or newly coined.

Inherent distinctiveness can be established by the use of invented words. For instance, invented words like RIN for washing powder, SONY and AKAI for electronics, YASHIKA and KODAK for cameras are inherently distinctive. Whereas, surnames or personal names like CADBURY for chocolates or TATAS for fast moving consumer goods have acquired distinctiveness through use.

Generally, surnames and personal names are common and frequently occurring and hence cannot be registered as trademarks. From a trademark perspective, this characteristic makes surnames and personal names neither distinctive nor capable of distinguishing the goods of one person from that of another bearing the same surname or personal name.

Functions of a Trademark

A trademark serves the purpose of identifying the source or the origin of goods. Trademark performs the following four functions.

* It identifies the product and it’s origin.
* It proposes to guarantee its quality.
* It advertises the product. The trademark represents the product.
* It creates an image of the product in the minds of the public particularly the consumers or the prospective consumers of such goods.

Types of trademarks for products include five main categories: generic mark, descriptive mark, suggestive mark, fanciful, and arbitrary mark.

* Generic Mark
  + A [generic trademark](https://www.upcounsel.com/generic-trademark" \t "_blank) actually doesn't qualify for a trademark unless it includes more specific detail. One example of a generic mark is the phrase, "The Ice Cream Shop." Offering trademark protection on something this generic would restrict all other shops that sell ice cream.
  + To qualify a generic mark for a trademark, it needs to describe qualities, characteristics, or ingredients of the good your business sells.
* Descriptive Mark
  + A [descriptive mark](https://www.upcounsel.com/descriptive-trademark" \t "_blank) identifies one or more characteristics of a prodct or service and only serves to describe the product. It has unique elements that qualify it for protection under trademark laws such as it must have secondary meaning such as amount and manner of advertising, volume of sales, length and manner of the mark's use, or results of consumer surveys to qualify. This means that consumers must recognize the mark and identify it with the brand.
  + To qualify as a descriptive mark, it should evolve from what the brand represents to who the brand represents.
* Suggestive Mark
  + A [suggestive mark](https://www.upcounsel.com/suggestive-trademark" \t "_blank) implies something about the good or service. A mark in this category typically qualifies for protection without requiring a secondary meaning.
  + The term "suggestive" means that the customer must use the imagination to figure out what services or goods the company offers. One example is the luxury automotive brand, Jaguar. It suggests speed and agility, but doesn't immediately convey a car manufacturer.
* Fanciful Mark
  + A [fanciful mark](https://www.upcounsel.com/fanciful-trademark" \t "_blank) is a term, name, or logo that is different from anything else that exists. This category is the easiest for obtaining trademark protection because it typically doesn't compete with anything else or become too generic.
  + Examples of fanciful marks include Kodak, Nike, and Adidas. These words don't hold any meaning in common language, so trademarking them doesn't infringe on the rights of other companies that offer similar products.
* Arbitrary Mark
  + An [arbitrary mark](https://www.upcounsel.com/arbitrary-trademark" \t "_blank) might include a term or phrase with a well-known meaning, but the meaning in its case is different. The best example of an arbitrary mark is Apple, the computer and electronics manufacturer. An apple is a familiar term, but in this case, the mark doesn't have anything to do with the general meaning of the term.

For companies that offer services:

* Service Mark
  + A [service mark](https://www.upcounsel.com/service-mark" \t "_blank) is the same as a trademark, but it distinguishes a company that provides services instead of products. A servce mark still falls under the legal trademark laws and must be registered with the USPTO.
  + A common example of a service mark would be the "McDonald's" service mark since it is used to represent the services provided.