TRADEMARKS
Geographical Limitations on Trademark Rights
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A trademark is any word, design, scent, name, sound, or other thing that is capable of distinguishing one person's or company's goods from another's, and indicating that such "branded" goods come from a single source - even if that source is unknown. A service mark is the same as a trademark; the only difference is that a trademark is used upon goods while a service mark is used in connection with services. Examples are Proctor and Gamble's CREST® mark for toothpaste and Supervalu Inc.'s CUB FOODS® mark for retail food store services.

A trademark or service mark provides a "shortcut" for customers to identify products and services offered by a business – often accompanied by an experiential and/or marketing driven sense of value for products and services bearing that mark. When properly used and protected, a mark can serve as a valuable marketing tool, complete with the ability to prevent competitors from using a confusingly similar brand in the same geographic area of the owner's use of the mark.

In the United States the proper use of a mark establishes the rights in the trademark. These are called common law trademark rights. Federal registration of the mark is not required. But, federal registration of the mark provides additional useful and important rights. The additional rights of a federal registration include:

- ❖ to use the ® registration symbol,

- ❖ to prevent competitors from using a confusingly similar brand nationwide even if the owner's use is not nationwide,

- ❖ to file an application to "reserve" the trademark prior to use (intent-to use application), and

- ❖ to elevate the trademark rights to limit challenges to the registration by a prior user of the mark (incontestable registration).

Unfortunately, whether the trademark rights come from common law or a federal registration they only extend to use of the mark in the United States. Details on securing trademark rights in other countries will be provided in the next issue.