

# TRADEMARKS - WHAT ARE THEY AND WHY WOULD I NEED ONE

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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. An example is the word CREST® for toothpaste. Any toothpaste bearing the word CREST® comes from a single source - Proctor and Gamble.

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. An example of a service mark is CUB FOODS® as the mark is used in connection with retail food store services - not the food itself.

Trademarks and service marks may take many forms, such as:

❖ **Words and Slogans:**

- JUST DO IT for sportswear

❖ **Symbols:**

- IBM for computers
-  for sportswear

❖ **Designs:**

-  for restaurant services

❖ **Devices: (packaging or container shape)**

-  for soft drinks

❖ **Sounds:** (e.g., NBC chimes)

-  for broadcast services

❖ **Color:** (e.g., the color pink for insulation)

-  for insulation

❖ **Smell:** (e.g., floral sent for yarn)

- (Can't find a way to represent this one)

Certain things cannot be trademarks or service marks. These include (i) the common name of a product or service (e.g., WATER for bottled water); (ii) pictures, designs, symbols, etc. that are merely ornamental such that a consumer would not recognize the feature as an indication of source (e.g., picture of a sumo wrestler and a map of Japan on a t-shirt); and (iii) a name used only to identify a business or vocation and that is not used to identify the goods or services it produces or provides (e.g., Doctor's Associates Inc [owner of the SUBWAY® sandwiches franchise]).

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.