

**TRADEMARK OR
COPYRIGHT?
IS IT A MARK OR A WRITING?**

HERSHKOVITZ IP GROUP

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General Comments About Talk

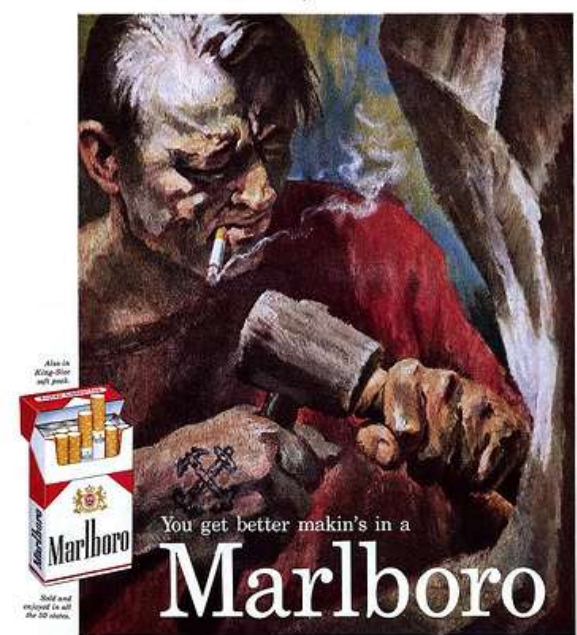
- 1. Most laws about T/M and © are international in scope with harmonizing treaties and laws that make most of the provisions similar in each country.
- 2. Trademark rights are determined on a country by country (or country group) basis, but are subject to an international convention. “Trademarks” as used in this talk includes service marks for services and trademarks for goods, and are sometimes referred to as “marks.”
- 3. Copyrights are universal and are simultaneously obtained in all countries that are members of the Berne Convention. One obtains copyright protection of “works.” Depending upon the particular county, they obviously include books and writings in general, music, buildings, paintings and statutes.

Trademark or Copyright (example 1)

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THE SATURDAY EVENING POST September 14, 1958

The better the makin's, the better the smoke



Also in King Size with pack.

You get better makin's in a

Marlboro

Sold and enjoyed in all the 50 states.

If you're thinking of changing brands, tattoo this in your mind... Marlboro's exclusive *Filter-Flavor Formula* gives you flavor you can get hold of. The improved Marlboro filter does what it's there for... You're smoking better when it's Marlboro.

Trademark or Copyright

- This is a Marlboro poster advertising the product and displaying the Marlboro colored pack that is opened and displaying cigarettes. Also in the poster are the words “Marlboro,” and the slogan “The better the makin’s, the better the market,” and a picture of a rough looking man having a cigarette in his mouth and holding a chisel and hammer, and apparently chiseling some unseen object.

Trademark or Copyright (example 2)

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Trademark or Copyright

- There are three views of the McDonald images
- 1. This is a picture of a building bearing the McDonald's color scheme in one of the McDonald's building shapes, with the "Golden Arches" forming an "M" above the McDonald's name and mounted on a pole outside, but adjacent to the building
- 2. This is a picture of a building having the golden arches embedded in the building frame
- 3. This is a picture of the rear pocket of a pair of jeans (or dungarees as I call them) on which is stitched the fanciful "M" logo of McDonalds.

Trademark or Copyright (example 3)



Trademark or Copyright

- **Apple Computer images**
- **1. This is a 2D enhanced picture of the Apple logo in 3D; the apple logo being an apple with a bite taken out on the right side and with an ovular shaped stem.**
- **2. This is a 2D drawing having the Apple logo superimposed on cave drawings.**
- **3. This is a 2D poster bearing a figure of an upper torso of a man wearing a hat, suit coat, and tie, but with a blank face onto which the Apple logo is superimposed.**

Trademark or Copyright (example 4)



Trademark or Copyright

- **Coke images**
- **1. The first is the stylized script that is recognizable no matter what language**
- **2. Next is the poster entitled “Always Harlem, Always Real.**
- **3. The third image is an animal (monkey?) drinking from a large bottle that has the famous coca cola shape.**
- **4. The fourth image is the bottle itself with the script written across the middle in a particular color scheme.**

Trademark or Copyright

- I. Outline of Talk
 - A. The appearance and use of an image
 - B. Trademarks - What are they?
 - C. Copyrights - What are they?
 - D. Review of initial images

A. The appearance and use of an image

- Appearance
 - A. See it
 - B. Hear it
 - C. Feel it
 - D. Smell it
 - E. In 3D, 2D, a solid figure or a flat sheet
 - F. Embedded in another object or stand alone
 - G. Used as decoration or in advertisement for a product or service

C. Trademarks - What are they?

- **Discuss:**
 - a. **Definition**
 - b. **Protection**
 - c. **Covers**
 - d. **Not included**
 - e. **How used**

Trademark Definition

- A trademark has been defined as:
 - “Anything that can be used to distinguish the goods and services of others and to indicated the origin of the goods and services.
 - Example: There are two labeled bottles in a grocery store. The label on one simply says “BLEACH,” and the label on the other simply says “CLOREX.” In CA or NY, you know that the source of the Clorex labeled bottle comes from the same company, but you do not know about the source of the Bleach labeled bottle.

Trademark Protection

- **Trademark protection includes the right to prevent the use by others of a confusingly similar mark on the same or related goods or by others in connection with related services.**

Trademark Coverage Includes:

- A word (e.g. APPLE);
- a phrase (e.g. The better the makin's, the better the market);
- a slogan (e.g. Things go better with Coke);
- a jingle (e.g. Nestles Makes the Very Best chau-ko—lete);
- a sound (e.g. tones when Windows starts);
- a design or logo (e.g. Apple Computer's apple);
- a 3D object (e.g. bcoke bottle);
- a building (e.g. McDonald's buildings);
- trade dress (e.g. the unique interior design of a restaurant);
- a smell (e.g. the smell of a sewing thread); and
- a color (e.g. Pink for insulation)

Exclusions from Trademarks

- Excluded from trademarks (varies by country) in US:
 - A. Descriptive
 - B. Functional
 - C. Primarily merely a surname
 - D. Primarily a geographical location
 - E. Emblem of the US government (e.g. the presidential shield or in Canada the Maple leaf)
 - F. The name of a US President or the spouse while living.

How Trademarks are used

- **A. Trademarks are used on the goods (e.g. being stamped or engraved into the goods), on labels applied to the goods, on packaging of the goods,**
- **B. Service Marks are used In connection with services, such as by advertising, on business cards, on letterhead.**

B. Copyrights - What are they?

- **Discuss:**
 - a. **Definition**
 - b. **Protection**
 - c. **Covers**
 - d. **Not included**
 - e. **How used**

Copyright Definition

- **A copyright is a writing or object that can be protected against its copying or distribution.**

Copyright Protection

- The owner has the exclusive rights:
- (1) to reproduce the work in copies or phonorecords;
- (2) to prepare derivative works;
- (3) to distribute copies or phonorecords
- (4) to perform publicly for literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works;
- (5) to display publically for literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including individual images of a motion picture; and
- (6) to perform the work publicly for sound recordings by means of a digital audio transmission.

Copyright covers

- **Original works of authorship fixed in any tangible medium of expression ... from which it can be perceived, reproduced or otherwise communicated.**
- **Works of authorship include the following categories:**
- **(1) literary works; (2) musical works, including any accompanying words; (3) dramatic works, including any accompanying music; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; (7) sound recordings; and (8) architectural works.**

Copyright No Include:

- (b) In no case does copyright protection for an original work of authorship extend to
- Idea,
- Procedure,
- Process,
- System,
- Method of operation,
- Concept,
- Principle, or
- Discovery,

How Copyrights are used

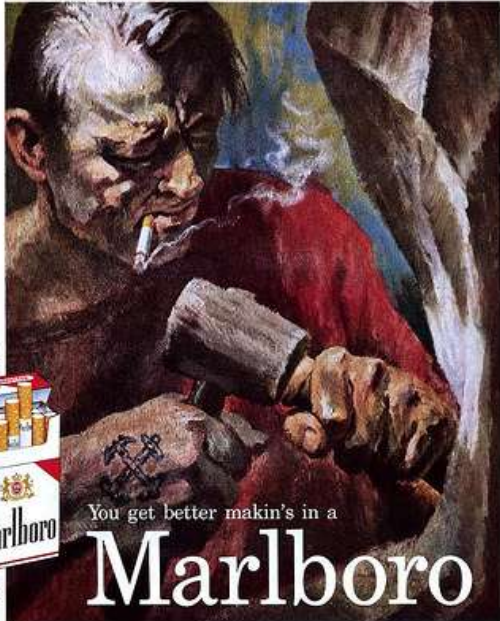
- Copyrighted work can be indicated by the phrase:
 - © [year date of publication] [name of owner];
 - But under the current US copyright act and in most other Berne countries, no formal act to indicate a work is copyrighted is required. Thus the Copyright phrase is not required in US

Copyright or Trademark (example 1)

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Copyright or Trademark (example 2)

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Copyright or Trademark (example 3)



Copyright or Trademark (example 4)



The image shows the classic Coca-Cola logo in its signature red script font on a white background. A small registered trademark symbol (®) is visible at the bottom right of the logo.



Thank You

- Harold L. Novick

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U.S. PATENT AND TRADEMARK OFFICE

The End

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