

Using your registered trade mark correctly

Even if you have registered a trade mark, you must use it correctly to maintain your protection.

Use your trade mark exactly as it appears in your registration

Always use your registered trade mark in the way it appears in your registration. That means you should not change any of the important elements of your trade mark like its colour, graphics or words.

Trade marks registered in block letters may be used in other fonts without affecting your protection.

You can change the trade mark in ways that do not substantially alter the mark without compromising your trade mark protection - but be careful. If the way you use your trade mark is too different to your registered trade mark, you risk losing protection.

Keep your trade mark distinctive

If you use your trade mark incorrectly, you risk it losing distinctiveness or becoming the generic name for the type of goods or services ("product"). Trade marks can become generic over time when the public uses your trade mark to describe a type of product or service.

This risk is greatest for new types of products. Many trade marks have been lost in this way, such as, ESCALATOR, TRAMPOLINE, LANOLIN, LINOLEUM, KEROSENE and NYLON.

If your trade mark has 'entered the public domain', it may not be possible to stop other businesses from using that name in association with their own brand.

Under New Zealand's trade mark law, a trade mark registration may be cancelled if it becomes generic.

Revocation can happen if the trade mark becomes a common name used by the general public for a product or service that it is registered for.

To keep your trade mark distinctive, follow these rules.

Trade marks should always:

- be followed by the descriptive name for the product
correct: SAVLON antiseptic cream, LUX soap, ELECTROLUX vacuum cleaner
incorrect: SAVLON, LUX, ELECTROLUX
- look distinctive, preferably in all capitals or in italics. The descriptive commercial name should not be capitalized.
correct: NILVERM sheep drench, VASELINE petroleum jelly
incorrect: nilverm drench, VASELINE JELLY

Trade marks should never:

- be pluralized
correct: a range of formulations of SAVLON antiseptics
incorrect: a range of SAVLONS is available
- be used in the possessive form
correct: selective effectiveness of ROUNDUP herbicide
incorrect: ROUNDUP'S selective effectiveness
- be used with any description other than the proper descriptive commercial name
correct: RESENE paints
incorrect: RESENE products
- be abbreviated, or used with other terms
correct: DULUX acrylic house paint
incorrect: acrylic DULUX.

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Show your trade mark is registered

Showing that your trade mark is registered is not compulsory in New Zealand. But if your trade mark is registered, we recommend its status as a registered trade mark should be shown on promotional material and on labels. Use the words 'registered trade mark' or any simple abbreviation of these words such as ®, or even "TM".

We also recommend you show the name of the registered trade mark's owner, particularly when you use trade marks owned by different companies.

"ACME is a registered trade mark of The Acme Company, New York, NY., U.S.A. Produced and Packaged in New Zealand by XYZ Limited."

If your product containers are small and space is limited, we recommend that you include the trade mark's registration and ownership status wording in your sales literature.

If your trade mark is unregistered or is a pending application, it is an offence to show it is a registered trade mark. If your mark is in either of these categories you should show that it is a 'trade mark' by using any simple abbreviations, such as "TM" or ™.

Contact A J Park to get the best advice about protecting your valuable brands.