



Should people be able to trademark phrases?

GETTING ORIENTED

The weekly passage describes the use of trademarks in the United States. Here is some information that might be helpful to students less familiar with this concept.

Trademarks

A trademark can be a name, word, phrase, logo, symbol, design, image or combination of these things. Occasionally trademarks are less conventional or common and may be based on color, smell, or sound. Usually, in order to establish a trademark as your own, it must be registered. Sometimes a trademark can be



protected if it's not registered, but the legal protection would be less than that of a registered trademark.

Intellectual Property

Intellectual property is an international term used to refer to creations of the mind. Creations of the mind include many kinds of artistic works such as musical compositions, literary works, a variety of designs, all kinds of inventions and, of course, trademarks.



The Lanham (Trademark) Act of 1947

This was the first law that was made in the United States to prohibit – or not allow – false advertising and trademark infringement. Infringement means to trespass on or violate someone else's rights. The Act was named after a United States Representative, Fritz G. Lanham, of Texas. The Act was passed on July 5, 1946, and signed into law by President Harry Truman. It went into effect one year later. The Act has been amended or changed several times since then. Among the important aspects or parts of this Act is the prohibition of a trademark that is similar to a known trademark.

Federal Trademark Registration

When you register a trademark, you are registering it with the United States Patent and Trademark Office (USPTO). There are many companies who can help you register a trademark online. They will do the work of checking to make sure no other company has the same name or trademark that you want to register. Online companies charge about \$150 to do the paperwork to prepare and file the trademark you have chosen. Some people feel it is necessary to hire an attorney if what you are registering is very valuable.





Should people be able to trademark phrases?

EVIDENCE AND PERSPECTIVES

	<i>Some may have this view:</i>	<i>But others may think:</i>
Trademark Holders	Trademark owners usually support the idea of being able to trademark a phrase. They don't want anyone else saying it is their trademark. They may have high hopes for earning a lot of money based on what they see as their own creative idea. They feel it increases the strength of their intellectual property if they are able to register their trademark phrases.	Some people or businesses that use certain phrases feel it is not necessary to register their trademark. They feel that they will be able to prove it is their original idea if there was ever a contention or disagreement. They might not continue using the particular phrase as time goes by, and they don't want to spend money registering it.
Lawyers	Intellectual property lawyers make their money on all kinds of trademarks. They would not be opposed to or against people trademarking phrases. They make their money dealing with people who break trademark laws. They would prefer that people register their trademarks. That way, if people claim that there is a problem, lawyers have an easier time dealing with the issue if everything is written down in legal terms.	In general, lawyers would not be against trademarking anything. There may be a few who feel that trademarking phrases can get kind of tricky as some phrases are used frequently. In these cases, it would be difficult to show in a court of law that a phrase was the property of one person.
Business Owners	Most business owners would support being able to trademark phrases because their companies might make a lot of money if the phrase attached to their business becomes very well known.	Some business owners might be opposed because their advertising phrases are so much like the trademarks of other companies. They must always be on the lookout to not trespass on the trademarks of other businesses.

- ✓ The FBI estimates that businesses lose over \$512 billion every year due to intellectual property losses.
- ✓ Each registration of a trademark must be renewed every 10 years, and a fee must be paid each time the reregistration occurs.
- ✓ The first known idea of a trademark was when the Roman blacksmiths, during the Roman Empire, put a mark on swords that they had created.
- ✓ The first U.S. use of a registered trademark was the Biblical figure of Samson wrestling a lion. It was used by *Samson*, a rope-making company, and is still used today.
- ✓ The government's system of protection has helped American industry to grow. New products have been invented, new uses for old ones discovered, and employment opportunities created for millions of Americans.

Additional Reading for Teachers

Look into the history of trademarks.
<http://en.wikipedia.org/wiki/Trademark>

Learn more about the Lanham (Trademark) Act.
<http://www.bitlaw.com>

Discover the process of registering a trademark.
www.uspto.gov/trademarks/teas/index.jsp



Should people be able to trademark phrases?

ANNOTATIONS FOR TEACHERS

Features of Academic Writing: *Structure of expository writing*

This passage is slightly different than most Word Generation passages. It does not clearly present an explanation of both sides of the issue. Instead, it provides information about trademarks and invites the reader to consider the circumstances under which a phrase should be trademarked.

To accomplish this, the writer followed a common expository structure:

Paragraph 1: A scenario that demonstrates the controversy

Paragraph 2: A definition of trademark and the law

Paragraph 3: An explanation of the types of phrases that companies can trademark

Paragraph 4: A new kind of trademark associated with new media

Paragraph 5: Poses the question to the reader

Last April, a restaurant with the name “Roscoe’s House of Chicken and Waffles” opened in Chicago. But there was a problem. A famous restaurant in Los Angeles had the same name except “Roscoe” was spelled with only one S. In addition to stealing the name, the Chicago restaurant had a logo that was similar to the one used by the original restaurant in Los Angeles. Copying the name and logo was an **explicit** violation of Roscoe’s **trademark**, so the Los Angeles restaurant immediately sued for trademark infringement. A Chicago court has ordered the Chicago restaurant to remove the name and logo from its business. The original Roscoe’s restaurant plans to seek money, or **compensation**, for damages.

A trademark is a word, name, or symbol used by a person or company to identify products and services. In the United States, you have to apply for a trademark which, if accepted, is then registered. Then no one else can use your trademark.

But trademarks can be tricky. The controversy is over how much and what kind of language we can claim as trademarks. For example, you cannot trademark descriptive words or terms like “liquid soap” or a geographic term like “New York” (as in calling your bagels “New York Bagels”). But Snapple

was able to trademark the phrase “made from the best stuff on Earth” to describe its juices and other products.

Phrases are also being trademarked. Paris Hilton trademarked the phrase “That’s hot!” as her own personal brand or catch phrase. Boxing promoter Bob Arum trademarked the phrase “Let’s get ready to rumble” which is a catchphrase used in boxing events. Thus, a trademark can become an explicit and unique mark of a person. The **media** and internet have gotten these phrases into widespread circulation at a faster rate. But trademarks aren’t new. Trademarks were used centuries ago, **prior** to the internet and mass media. The companies for the beers Lowenbrau and Stella Artois claim that their logos have been in use since 1383 and 1366 respectively.

What do you think? Should people be able to trademark words, names, or phrases for their exclusive use? Should they do it only for the purposes of selling a product or service? Should trademark applications be decided on a case-by-case basis? Where do you stand?



Should people be able to trademark phrases?

GENERATING WORDS

Shades of meaning

One of this week's focus words is **explicit**. It means fully and clearly expressed. "Copying the name and logo was an **explicit** violation of Roscoe's trademark." That means that the law was very clear that the restaurant in Chicago could not use the same name as the restaurant in Los Angeles, even if the owners changed the spelling. There is an **explicit** law that makes it illegal to do so.

Your teacher may give you **explicit** directions to put all of your notes away before taking a test. That means that he was very clear in his directions and if you do not follow them, having notes out on your desk could be considered cheating.

In another Word Generation unit, students discuss the controversial issue of rating systems for video games and movies. Some video games are related "Mature" because they contain **explicit** language and violence. That means that the characters in video games may use guns or other weapons to kill people. They might also use offensive language, such as swear words.

The different uses of "explicit" are related, but they have different meanings. If you look up the word **explicit** in the dictionary, you might see something like this:

explicit |ik' splisit|
adjective
stated clearly and in detail, leaving no room for confusion or doubt: *the speaker's intentions were not made explicit.*

- (of a person) stating something in such a way: *let me be explicit.*
- describing or representing sexual activity in a graphic fashion: *explicit photos showing poses and acts.*

If a reader was not aware of these different meanings, there could be a lot of confusion. In the weekly passage, a reader who only knows the second definition might wonder where the violence or sex is in the name *Roscoe's House of Chicken and Waffles!*

Some words are spelled the same but have unrelated meanings. The word "**stable**" is an example of this. We can say "The patient is **stable** now that she's at the hospital." This means that the patient is not going to change or get worse now that she's in the hospital.

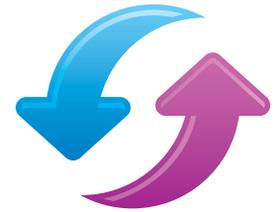
However, we can also use the word **stable** when talking about horses. For example, "The winner of the race is waiting in the **stable** to be examined by the veterinarian." Here, the word **stable** is used to describe a building where horses are kept. If you looked up the word **stable** in the dictionary, you might see this:

stable¹ |'stābəl|
adjective (**stabler** , **stablest**)
not likely to change or fail; firmly established: *a stable relationship | prices have remained relatively stable.*

stable² |'stābəl|
noun
a building set apart and adapted for keeping horses.

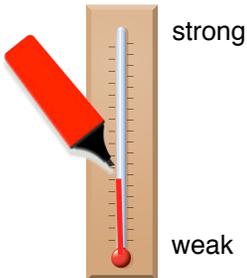
Directions: Look at the following words and determine if the two meanings are related (like **explicit**) or unrelated (like **stable**).

Focus	Meaning	Meaning #2	
to adopt	to take someone else's child into your home and	to begin to use an idea or plan	These meanings are <input type="checkbox"/> related <input type="checkbox"/> unrelat
compact	an agreement between two or more	a small car	These meanings are <input type="checkbox"/> related
monitor	a screen that is attached to a computer	someone whose job it is to make sure things	These meanings are <input type="checkbox"/> related
to promote	to advertise a product or event	to give someone a better position at	These meanings are <input type="checkbox"/> related



Should people be able to trademark phrases?

DEVELOPING DISCUSSIONS



People should be able to trademark phrases

<i>It's the fair thing to do if someone created it</i>	<i>Otherwise, people would just steal others' ideas and stop being creative</i>	<i>Write your own:</i>

People should not be able to trademark phrases

<i>Trademarked phrases would be impossible to monitor or check on</i>	<i>Language can't be owned by someone</i>	<i>Write your own:</i>



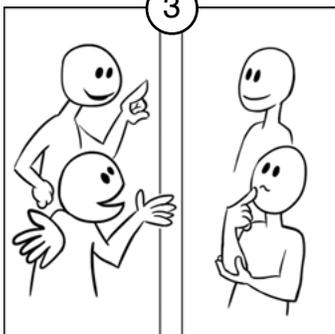
1



2



3



Step One: Look at the reasons for both sides of the issue. Think about which reasons are strong and which reasons are weak. Color in the meter above each reason. Think about why you chose the strongest and weakest reasons. Be ready to explain to your partner. Think about how you can use focus words: *trademark, explicit, media, compensation* and *prior*.

Step Two: Explain your meter to your partner. Why did you choose a strong or weak rating? Ask your partner questions if you need more explanation. Challenge your partner if your ratings are different. As a pair, be prepared to argue that one of the issues has stronger reasons.

Step Three: Explain to another pair of students in the class which side you think has the better reasons.

Words and phrases:

- The strongest reason for trademarking phrases is ____.
- This is the strongest reason because ____.
- The article provides evidence for this when it says ____.
- This is the weakest reason due to ____.
- That sounds like a good reason, but what is the evidence for ____?
- I agree that it's the strongest. Can you think of any more evidence?
- That's important, but do you think it outweighs ____?
- I didn't think of that. Can you say more about ____?
- We decided that ____ has stronger reasons. For example, ____.
- What side do you think has the best reasons?
- Do you really believe that?
- Can you think of any reasons that are not included here?