What is a trademark?

- Trademark protect identifiers used in commerce.
  - Trade names, logos, slogan, etc.
  - Can actually be anything - even things like scents and sounds - that clearly identifies a product or service to consumers.
- Trademark is automatic with use; simply using it gives you some basic level or protection.
- If you register the trademark with the US Patent & Trademark Office, you have more powerful protection and more control over how it's protected in the United States.
  - means you are simply claiming ownership of a mark; ® means your mark is a registered trademark.
- Trademark protection can be renewed indefinitely, as long as you keep using it; there are century-old trademarks still active.
- Trademarks are tied to specific classes of goods and services; two companies could use similar product names, as long as they're in sufficiently different areas.
  - You may know "Raid" as a brand name for insecticides, but several other companies also own "Raid" trademarks for things like weapons manufacturing, educational services, and automotive parts.

What makes a good trademark?

A strong trademark is DISTINCTIVE

**Strong marks include...**
- Fanciful terms that don't mean anything else (e.g. "Xerox" or "Exxon")
- Arbitrary terms that aren't related to the product being sold (e.g. "Apple" for computers or "Shell" for oil)
- Suggestive terms that suggest something about the product (e.g. "MicroSoft" suggests software for what used to be known as microcomputers)

A weak trademark is NOT DISTINCTIVE

**Weak marks include...**
- Descriptive terms that merely describe the product (e.g. naming a delivery service "Speedy Delivery")
- Generic terms that are just the name of a thing (e.g. naming a smartphone manufacturer "Smartphone")
- If not protected from misuse, a strong trademark can become generalized (e.g. "Escalator," "Cellophane," and "Aspirin" - all originally brand names and lose protection)

Why do you need to search trademarks?

- You need to figure out if your mark is already in use.
- Even if it isn't, you need to figure the potential likelihood of confusion:
  - Look-alikes, sound-alikes, etc.
How do you search trademarks?

- There is no search tool for unregistered trademarks; your best bet is to use Google
- For registered trademarks, use USPTO’s TESS [http://tess2.uspto.gov/]
  - You can limit your search to just active ("live") trademarks, ignoring the expired ("dead") trademarks
- Searching for a text ("word") mark
  - Remember that you want to make sure your trademark won’t be confused with someone else’s – don’t only look for exact matches
  - Be sure to search for alternate spellings, even silly ones (e.g. easy vs. e-z vs ez or cheese vs. cheez)
  - You can use wildcards (e.g. appl* and chee$1e)
- Searching for a picture ("image") trademark
  - You need to use the design codes [http://tess2.uspto.gov/tmdb/dscm/index.htm] and the advanced search tool to focus in on the specific elements in the picture
  - The “Image List” view is often helpful when you’re looking for specific visual elements
- Don’t just look at the marks; look at the “Goods and Services” field in the full record to see which products and services are covered

What are some fun sample searches?

- "Spider-Man" - how many trademarks does Marvel have for Spider-Man, and for which different products?
- "Lilly" - how many companies have the word "Lilly" in their names and are they all related?

For more general information about patents and trademarks...

- For legal assistance and legal advice, contact a lawyer.

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