

Marketing Matters  
by Paige Henson

## A Mark by Any Other Name

Trademarks, service marks, patents and copyrights. Which do you need to protect your invention? Your screenplay? Your new method of manufacturing bobble-head dolls? Below is a primer that spells out the basic differences.

A **trademark** (<sup>TM</sup>) is a word, phrase, symbol, design or a combination of words, phrases, symbols or designs that identify and distinguish the source of the goods or services of one party from those of another. “Distinguish” is the keyword here. These are brand names you’re familiar with: Puffs (facial tissues) vs. Kleenex; Sony vs. Magnavox; Rolex vs. Timex. Because of advertising, the consumer usually knows instantaneously what qualities are attached to a trademarked name. Usually a trademarked logo appears on the product or its packaging at the top right, but it doesn’t necessarily have to. If the trademark is a federally-registered one, the trademark designation may appear as a capital “R” in a circle. You can also trademark a slogan with a brand name, i.e. for Hallmark: “When you care to send the very best” or Budweiser: “The King of Beers.” Before the mid-1980s, you were unable to reserve a trademark; it had to appear visually on an actual product package before being declared official. Today, you can register a potential name, logo design or slogan if you intend to use the mark within two years of your filing with the U.S. Patent and Trademark Office.

A **service mark** (<sup>SM</sup>) is almost the same as a trademark except that it identifies and distinguishes the source of a *service* instead of a product. A service mark is often seen in print advertising for the service.

A **copyright** protects an original artistic, literary, dramatic, musical, or any other intellectual work. The work does not have to be published to be copyrighted. In fact, as of 1976, a copyright is *automatically assigned* to the creator of a work at the time the work is created. A copyright symbol and year may be attached to the work by the creator as an extra measure of protection, serving as a reminder that this law is indeed in place. The writer, artist, composer, etc. may also choose, for a small fee, to file the copyright with the Copyright Office of the Library of Congress.

A **patent** protects an invention, and applying for one can be a lengthy process. You can use the words “patent pending” if you have applied for -- but have not yet received -- the official patent number. The term of a new patent is 20 years from the date on which the application for the patent was filed in the U.S. and, like a trade or service mark, is issued by the United States Patent and Trademark Office. Patents are separated into three categories: 1) A **utility patent** for new inventions or discoveries with a new and useful purpose (they must be useful in some way, not just decorative); 2) A **design patent** for a new, original and ornamental design “for an article of manufacture”; and 3) **Plant patent** for a new variety of plant that one discovers or asexually reproduces. If you need

assistance to submit your patent, you may use the services of a patent attorney or a patent agent, but be sure he or she is certified by the USPTO.