



## What's the Difference Between a Trademark and a Copyright?

There's no doubt that you've come across the words trademark and copyright countless times in your life. But, have you ever really stopped and thought about what a trademark is? Or how to get copyright protection? Maybe you've wanted to trademark your name or copyright your website content to help establish your brand on social media.

Your first step is to understand that, while both pertain to intellectual property, trademarks and copyrights are two completely different things. Since those words are often found together, it's important to establish what each one means to ensure their correct use.

### WHAT IS A TRADEMARK?

For the answer, let's go right to the [United States Patent and Trademark Office \(USPTO\)](#). Its website defines a trademark as a "word, phrase, symbol, and/or design that identifies and distinguishes the source of the goods of one party from those of others."

So, think of things like the Nike® Swoosh. That iconic logo is a trademark. The entire phrase "The Best Part of Wakin' Up is Folgers® in Your Cup®" is a trademark too.

But trademarks can be more nuanced than that. Take trade dress for instance. Trade dress can be a specific element of the design. The signature green and yellow color scheme John Deere® uses on its tractors could be considered trade dress, as could the familiar shape of a Coca-Cola® bottle. Conversely, generic and store brands offer a good example of how to mimic trade dress without fully infringing on a trademark. (If you've seen the movie "Coming to America," then [this process may sound familiar](#).)

### WHAT IS A COPYRIGHT?

Speaking of movies—those are good examples of copyrighted works. Going back to the USPTO website, a copyright "protects original works of authorship including literary, dramatic, musical and artistic works, such as poetry, novels, movies, songs, computer software and architecture."

For example, if you write a song, then another party wanted to use that song in the commercial, they've got to get permission from you first. Use of the copyrighted material without your permission could violate the law. That's good news for you—because that means your permission can come with a price tag.

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What's interesting about copyrights is that you don't necessarily have to register a copyright to receive copyright protection. It should be pointed out however, that it can be very difficult to prove ownership or unauthorized use of your work without registering it first.

## TRADEMARKS IN COURT

There's a good chance you've heard the soundbite "Let's get ready to ruuuuummmmmble!" sometime in your life—it's a pop culture staple. But did you know that phrase has trademark protection? Prominent boxing announcer Michael Buffer came up with the phrase (and its famous delivery) and was smart enough to trademark it. That means, any time you hear that phrase in movies or in a commercial, he probably got a nice paycheck for its use.

Buffer is pretty diligent at policing his property too. 2010's *Buffer v. GRM Communs., Inc.* (*Buffer v GRM Communs., Inc.*, 2010 U.S. Dist. LEXIS 146627) is a good example. If you're a Lexis Advance® user, you can [get plenty of details on the case here](#). Buffer discovered a radio station had used his signature phrase without getting his OK first and, as such, sought a legal remedy—invoking both the Lanham Trademark Act and the Copyright Act of 1976 in the process. The particular case in question centers largely around the recuperation of legal fees Buffer incurred to defend his trademark.

## SERVICE MARKS

As a quick aside, there's an offshoot from trademarks that are equally important: service marks. They work pretty much the same as trademarks, only they apply to companies that provide a service, rather than a product. So, while Coca-Cola can trademark its bottle, AT&T® can service mark its name.

## RAMBLE ON

While not intended to be an exhaustive whitepaper on the subject, hopefully this gives you a bit of insight on the nuances between trademarks and copyrights.

So, let's review:

The Led Zeppelin® name is a trademark.

Stairway to Heaven is a copyrighted work.

And if you were able to build a physical stairway to cross into the afterlife, it would probably be covered by a [patent](#)—but that's a topic for a different day...

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