

- **Trademark** – a word, symbol, phrase, or design that identifies the source of the goods [™] / [®]
- **Copyright** – protects original works of authorship (e.g., literary, music, dramatic, artistic work) ©
- **Patent** – protects inventions, original ideas or new processes (e.g. machines, formulas, product designs)

What are Trademarks?

Public Domain vs. Exclusive Rights

Who Do Trademarks Protect?

- Primary policy rational for which Congress originally enacted trademark laws was to protect consumers from confusion and harm
- Trademark law falls under the “Commerce Clause” (unlike Copyrights and Patents which have direct authority in the “Progress Clause”)
- More recent “additions” to trademark law by Congress protect exclusive rights holders
 - Dilution
 - Anticybersquatting

A Trademark is Any:

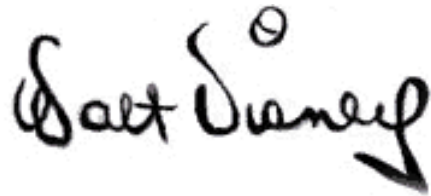
- **Word**
- **Name**
- **Logo**
- **Color**
- **Trade Dress**
- **Sound**
- **Slogan**
- **Smell**

Used by a party to identify its goods or services and distinguish them from those manufactured or offered by others

- Word



- Name



- Logo



Trademarks: Spectrum of Distinctiveness

More Distinct

- **Fanciful** SONOS
- **Arbitrary** SHELL gasoline
- **Suggestive** BLU-RAY
- **Descriptive** SPORTS ILLUSTRATED
- **Generic** SALT, ASPIRIN (KLEENEX and VELCRO are close)

Less Distinct

- International Classes of Goods and Services
- Application Contents
 - Class
 - Description of Goods and Services
- TM Prosecution
 - Descriptiveness
 - Likelihood of Confusion

- How to come up with a non-descriptive mark/brand that's attractive to the consumer

Brainstorming session:

1. List the qualities of your service / product that make it special.
2. Try to come up with as many (preferably unrelated) items / services that also have some of these same qualities.
3. After you have lots of ideas, get creative about using / combining your best ideas into distinctive marks / brands. Ideally, try to come up with about 5-10 marks / brands.
4. Rank your ideas, run preliminary clearance searches.
5. Run a full search, file TM apps.

Branding Exercise – due 2/23/2016

Come up with the following:

- a) A brand name and artistic logo for the product you are building.
- b) A brief (approx. 5 words or less) slogan/description of your product.

Email an image of the logo to the instructor and TA by 5pm on 2/22/2016. In class, be prepared to discuss the following:

1. What are the qualities of the product that you would like to impart upon the consumer?
2. What were some of the key words that came out of your brainstorm session (including ones that you did not use)?
3. Where on the spectrum of distinctiveness does your mark fall?