

Real columnists don't Rollerblade in Speedos

By Bruce A. Love

I know better than to write about "rollerblading in one's speedos while listening to muzak." I take pride in avoiding such indiscretions. In a recent column, however, my editor had to stop me from committing an equally egregious gaffe. With one stroke of her mighty pen, Kristin Heinbaugh slashed what I thought was a perfectly appropriate piece of alliterated prose. By doing so, she saved me from committing an act of trademark infringement!

I was surprised to learn that my reference to "dumpster diving" was an inappropriate use of a legal name. This term is commonly (and improperly) used in our modern-day culture to describe techniques employed by identity stealing trash pickers. The truth is, "Dumpster," "Rollerblade," "Speedo," and "Muzak," are all trademarked names for commercially available products or services. They are therefore afforded certain legal protections as "intellectual property." I know about intellectual property. In fact I have taught marketing courses in which I addressed this topic, and I have often reminded students not to use terms such as "Xerox," when they really mean, "photocopy," or "Kleenex," when they mean "facial tissue." This time, however, I honestly thought that "dumpster" was the generic name for all large commercial garbage bins. I was wrong - it is a trademarked name owned by the Dempster Dumpmaster Company.

Company names and product names can be very valuable assets. The last thing a business wants is to have its name reduced to a generic term that all its competitors can use. Unfortunately, this is exactly what happens when names are mismanaged. Can you imagine a world in which most people call all food storage bags, "Baggies," all wet/dry vacuums, "Shop-Vacs," and all cotton swabs, "Q-tips?" The answer, of course, is that we can imagine such violations of trademark law very easily!

Unlike other forms of intellectual property (namely patents and copyrights), trade names and trademarks must be actively used and defended. Copyright and patent holders can "sit on" such intellectual property to prevent its use, but a trademark owner who fails to defend it against infringement may lose the exclusive right to use it. This is true even if the name has been registered with the United States Patent and Trademark Office (www.uspto.gov).

Some companies are fighting a losing battle to maintain control over their intellectual property rights. When you get a cut, do you yell, "Someone get me a Band-Aid!" or do you

use the legally correct term when you call for "self-adhesive bandages"? This misuse of a trademarked name can cause the name to become generic, and therefore become fair game for general use in the public domain.

At one time, columnists were not permitted to write about bikini-clad beach beauties. This was not because of the risqué images that could be evoked by talented writers, but because "Bikini" was a brand name. So, too, were "Shredded Wheat," "Cellophane," and "yo-yo." Each of these product names became so popular, that public (and in some cases corporate) misuse of these names caused the company to lose exclusive rights to those names! The terms are now extensively used by the competitors of the original products.

Even companies that have only been around for a short time are at risk of becoming "genericized." If I were doing Internet research on pop female superstars (NOT "pop tarts"), it would be improper for me to "google" Britney Spears (this might be improper even if "Google" wasn't a registered trademark for a popular search engine!).

Here are several precautions you can take to help prevent products from becoming generic:

- Use registered trademark symbols in all published materials.
- Always use a trademark as an adjective modifying a noun (We should have been saying, "Look at that Bikini swimsuit!," not "Look at that Bikini!").
- Always distinguish trademarks from surrounding text by using initial capital letters, all caps, italicized text, or bolded text.
- Never use a trademark as a verb. (You should never TiVo your favorite television programs, nor should you "Google" Britney).
- Never use the trademark in the possessive form like, "My Bobcat's wheel fell off."
- Never modify a trademark to the plural form. Instead, change the generic word from singular to plural. (Always "Pass the Oreo cookies;" never "Pass the Oreos").
- Give legal notice to anyone violating the above rules in reference to your product.

For a comprehensive and informative look at trademarked names, visit www.inta.org/tmcklst1.htm.

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