Trademarks are used to identify products used in commerce. This research brief discusses what trademarks are, introduces some basic issues in modern trademark law, and discusses the differences between state and federal trademark protection.

**What are Trademarks?**

A trademark is “any word, name, symbol, or device, or any combination thereof... used by a person, or... which a person has a bona fide intention to use in commerce and applies to register on the principal register established by this Act, to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.”

**Current Issues**

The current hot topics relating to trademarks have to do with trademark dilution and cybersquatting. The dilution of a trademark occurs when “the capacity of a famous mark to identify and distinguish goods or services” is lessened. This can happen in many ways, usually involving the use of the mark, or of a substantially similar mark, to identify goods or services belonging to another, and is often a concern in counterfeiting proceedings. It may also be used by commercial websites that, while not seeking to trade on the good will generated by another’s trademark, still create the possibility, however innocently, of customer confusion about the origin of the good and services (such as confusion between an automobile manufacturer and manufacturers of after-market enhancements). However, noncommercial use of the mark, comparative commercial advertising, and news commentary are excepted from this cause of action.

Because noncommercial use does not qualify as dilution, anti-cybersquatting legislation attempted to plug the hole by adding a provision specifically disallowing the bad faith registration of or trafficking in domain names that are identical or confusingly similar to marks, or (in the case of famous marks) dilutive of them. This has prompted some ill will online as this may affect some domain names belonging to parody and satire sites, or to businesses that would not usually be in such a position as to cause confusion but for the web (such as regional businesses with similar names).
What's the Difference between State and Federal Trademarks?

While there are a variety of state trademark statutes, a federal trademark has the power to trump local use. State trademarks can be much easier to obtain and offer some degree of protection against in-state infringement, but are generally a lesser option as they do not insulate the trademark holder from claims of infringement. Though the federal trademark system requires the holder to be engaged in some measure of interstate commerce, due to expansive reading of the Commerce Clause, “it is very difficult for a business not to be engaged in commerce which can be controlled by Congress.”

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2 ibid.
3 15 USC § 1125 (c)(4)
4 15 USC § 1125 (d)
6 ibid.

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