



## My Characters Meet at Starbucks®

by Kathryn Page Camp

You can't copyright names and slogans, so it's okay to use them in your writing. Isn't it?

The answer is usually "yes," although there are exceptions. One potential issue is libel, which is covered in "Writing About Uncle Charlie." The other issue is trademark, which is the subject of this article.

### **Trademark Basics**

In simple terms, a trademark is any word, name, symbol, or device that makes you think of a particular product or group of products. If you hear someone say "McDonalds" or see the golden arches, you think of a specific chain of fast food restaurants and the menu items those restaurants sell. (Okay, so maybe your last name is McDonald and you think of your family, but bear with me here.) Marks that identify services (e.g., FedEx) rather than goods are called service marks, but this article will refer to them all as trademarks.

The ® symbol after the word, name, symbol, or device shows that it is registered with the U.S. Patent and Trademark Office, and some states also have facilities for registering trademarks. A trademark does not have to be registered to be valid, however.

Whether or not the mark is registered, trademark protection is very narrow: the only protection is against consumer confusion over the source of a product or service. Consumers use recognizable marks to tell them that they are getting a certain quality or a product with particular characteristics. When you see the Nike swoosh on a pair of shoes, you expect them to last for a while. When a counterfeiter prints the swoosh (or even a simple check-mark) on shoddy-quality shoes, people are misled. That harms both the consumer (who is not getting what he or she expected) and Nike (who could lose sales to the counterfeiter and suffer harm to its reputation when the shoes fall apart).

You don't infringe a trademark unless you lead people to believe that you are connected with the brand or that a counterfeit product is authentic. So how can a writer get in trouble by using a trademark? If fictional places or characters are trademarked and your use of them is likely to lead others to believe that you are the trademark owner, or even that your work is sanctioned by the trademark owner, you could be sued for infringement. Some fan fiction may fall into this category. So if you are writing fan fiction, make it very clear that you have no connection with and are not endorsed by the trademark owner.

### **Using Trademarks in Your Manuscript**

Your characters can drink 7-Up without worrying about trademark infringement. No one is going to go out and buy counterfeit 7-Up based on your manuscript, nor will readers assume that the makers of 7-Up are connected with your book. You don't have to call it lemon-lime soda in order to be safe.

Formica® has an advertising campaign that asks writers to “circle their R's.” A brand name can lose its trademark protection if consumers use it generically to refer to any brand of the same type of product. After people started referring to all tissues as kleenex and to photocopies made on any brand photocopier as xeroxes, the owners of those trademarks spent a lot of money educating consumers on the proper use of the terms. Formica is trying to prevent it happening to them.

Unfortunately, Formica's solution has its own problems. The ® interrupts the story, which is a cardinal sin. The ® is not legally required, and most publishers don't use it. On the other hand, there are other ways to help trademark owners protect their property. One is to use generic terms. Or if you think “the real thing” will add authenticity, just capitalize Coke.

So if your characters want to meet at Starbucks, let them.

### **For More Information**

The U.S. Patent and Trademark Office ([www.uspto.gov](http://www.uspto.gov)) has some helpful information, although most of it is aimed at trademark owners. The web site also allows you to search for federally registered marks. If you need more detailed legal help, call your local bar association and ask them to refer you to an attorney who specializes in trademarks.