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**Trademark Use Guidelines**  
2013

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# Introduction

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The Dow Chemical Company trademarks are well-known and identifiable in multiple market segments around the world. The strength of Dow trademarks and the creativity of Dow people are what sustain the worldwide acceptability of The Dow Chemical Company products.

Correct use of the Dow trademarks is essential to maintaining the marks and protecting their value to the company. All Dow employees are responsible for making certain that the company trademarks are used within these guidelines to ensure the continued preeminence Dow products have achieved in their respective market segments.

Incorrect use of a trademark, even in company correspondence, unwittingly contributes to its vulnerability. Such failure to use trademarks properly may result in their becoming generic. Examples of trademarks which became generic are aspirin, cellophane, kerosene, elevator, and escalator — all of which are now public property. These once powerful trademarks no longer serve the commercial needs of their original owners.

The following important rules of trademark use apply to all communication materials, including labels, advertising, literature, Internet and Intranet sites, trade show exhibits, promotional items, correspondence, etc. Because a particular usage is not discussed or expressly prohibited in these guidelines does not mean that it is approved by The Dow Chemical Company Trademark Department.

The guidelines discuss the most common questions and provide guidance for the use of Dow's trademarks. However, it is important to note that rules and requirements sometimes vary from country to country and from case to case.

Please direct any questions of use not covered in these guidelines directly to the Trademark Department in Indianapolis, Indiana, U.S.A. or visit our Intranet site at Dow Keyword: Trademark.

NOTE: General Dow Brand Standards can be found on the Dow Intranet, Keywords: Corporate Identity.

## Use of “Dow” as a trade name and “DOW” as a trademark

In corporate literature, the term “Dow” functions in multiple capacities. The most common use is a shortened reference to the formal company name, The Dow Chemical Company. In this context, Dow is a trade name rather than a trademark, and the proper format is a capital “D” followed by a lower case “o” and lower case “w.”

Example: Dow

This term can also function as a trademark. This is most common when referring to product brand names such as DOW™ Ethylene Oxide, or the DOW Diamond logo. In this context, the word DOW should be ALL CAPITAL letters and followed by the superscripted “TM” symbol.

Example: DOW™

Note: if “DOW” is used in front of another Dow trademark, the TM symbol is only required on the second trademark.

Example: DOW FILMTEC™ membranes

## Distinctive use of trademarks in text — “ALL CAPS”

Trademarks should be set apart from other words in the surrounding text to inform the reader that this term has a special significance as a trademark. The trademark functions as an adjective and should be followed by the common generic term.

The standard written format of Dow trademarks is to use ALL CAPITAL letters for the trademark, followed by the common generic term. The generic term can be written in either upper and lower case letters or in all lower case letters.

Example:     INSPIRE™ Performance Polymers  
                  (preferred)  
                  INSPIRE™ performance polymers  
                  (acceptable)

Avoid unnecessary capitalization of common words used in the same context with the trademarks, which tends to make the trademark less distinctive.

## Use of “Dow” trademarks and “DOW” in a “stylized” format

Although Dow prefers to use all capital letters for its trademarks, there are limited instances for specific marks to be referenced in a “stylized” format. A stylized trademark is where within a particular trademark, one or more letters in the middle of the trademark are capitalized to present a specific look or pronunciation, such as “GoldSky.” The stylized presentation of a trademark is distinctive and acceptable as an alternative to all capitalized format.

## Trademark notice symbols — “TM”, ®

**1. Use the “TM” symbol on all trademarks except the DOW Diamond logo, which uses the Circle R “®”** The “TM” (in superscript) or the Circle R “®” trademark notice symbols used following the trademark are a formal notice to the reader that Dow is claiming trademark rights in the term. The Circle R “®” must only be used after a national trademark registration has been acquired for the country in question.

Dow’s standard format is to use the “TM” symbol (in superscript) following all trademarks owned by Dow, or an affiliated company of Dow, along with the appropriate corresponding ownership footnote, with the exception of the DOW Diamond logo, which will be marked with a Circle R “®.” In United States advertising, a Circle R “®” may be used once federal registration has been achieved, however if you are uncertain, just use the “TM” symbol.

Note: For Dow AgroSciences see Dow AgroSciences Trademark Use Guidelines.

Example: STYROFOAM™ Insulation

Example:  The Dow logo consists of the word "Dow" in a white, serif font, centered within a red diamond shape. A small registered trademark symbol (®) is located at the bottom right corner of the diamond.

- 2. How often is the “TM” symbol used in a literature piece?** The “TM” trademark notice symbol and the appropriate generic descriptor should be used with the trademark, as follows:
- After the most prominent use of the trademark, such as when used in headings, titles, etc.;
  - Following the trademark the first time the mark appears in each section of running text in labeling, advertising copy, promotional material, literature pieces, electronic presentation materials, reports, and other printed or typed materials;
  - The first time the mark is used on each page (or each field of vision for rolling text such as website pages).
- 3. The asterisk “\*”:** The use of the asterisk for international trademarks has been replaced by use of a “TM” symbol. When new literature pieces are created or revised, the asterisk “\*” should be replaced with the “TM” symbol.

## Ownership footnotes

While trademark notices are used to identify the trademark, they also lead the reader to a footnote that identifies the owner of the trademark. In our case, The Dow Chemical Company or an affiliated company of Dow. Following are the acceptable formats of trademark ownership footnotes for Dow.

- 1. Standard text of the footnote for Dow:** The proper ownership footnote format for marks that are owned by The Dow Chemical Company is:

®™ Trademark of the Dow Chemical Company

- 2. Standard text of the footnote for Dow and affiliated companies:** The proper ownership footnote for multiple trademarks owned by Dow or a subsidiary, or an affiliated company of Dow is as follows:

®™ Trademark of the Dow Chemical Company (Dow) or an affiliated company of Dow

- 3. Modifications based on which symbols appear:** Although the above two examples are the preferred format for the ownership footnote, the line can be modified based upon which symbols are used in the literature piece. For example:

- If the writing contains only trademarks referenced with the “TM” notice symbol, then the symbol R ® would not appear in the footnote.

Example: ™ Trademark of the Dow Chemical Company (Dow) or an affiliated company of Dow

- If the DOW Diamond logo, which should be referenced with the “®” symbol is also present in the literature piece, then the footnote should be expanded

Example: ®™ Trademark of the Dow Chemical Company (Dow) or an affiliated company of Dow

- If the “TM” and ® symbols are present, then the appropriate footnote is:

Example: ®™ Trademark of the Dow Chemical Company (Dow) or an affiliated company of Dow

- 4. Footnote when third-party trademarks also use the “TM” or Circle R “®” symbol:**

**A. Trademarks owned by other companies in general:** Care must be taken when referring to trademarks of other companies in reports, advertisements, and publicity materials. Those trademarks must be used distinctively with at least an initial capital letter and the correct descriptive term. Providing trademark notices for the identification of third-party trademark owners is optional. Therefore, the standard format is not to footnote third-party trademarks and not to place any trademark symbols after the trademarks, except, in certain instances, where The Dow Chemical Company has entered into agreements with third parties who may require a trademark notice. Please contact the Trademark Department when questions arise.

**B. Responsible Care®:** The Responsible Care mark is an example of a case where Dow is obligated to use a trademark notice symbol and ownership footnote for a third-party mark. The Dow Chemical Company is committed to the principles of Responsible Care, including the promise to provide the public with information regarding The Dow Chemical Company environmental, health, and safety procedures. Responsible Care is a registered servicemark of The American Chemistry Council (ACC) in the United States. Use of the Responsible Care service mark must comply with ACC’s trademark guidelines and must be designated with an “®” symbol. It should be marked and footnoted as follows:

Responsible Care® program

- ® Responsible Care is a service mark of The American Chemistry Council in the United States

- C. When third-party marks use the same “TM” or “®” in the same copy, identify the specific mark owned by the party in the footnote:**

When third-party trademarks are also listed or referenced with a trademark symbol within the same writing as Dow trademarks, then the footnote should identify which marks are owned by each party.

Examples: ®™ The DOW Diamond and FILMTEC are trademarks of The Dow Chemical Company (“Dow”) or an affiliated company of Dow

- ® Responsible Care is a service mark of The American Chemistry Council in the United States

- 5. Placement of the footnote:** Where the footnote appears depends on the type of literature piece. For written text pieces containing a single subject and less than five pages in length, the footnote should appear on the bottom of the last page of the text. Written text pieces that are greater than five pages in length should have the footnote on each page that has a trademark reference. For written pieces with multiple subject materials, such as the Intranet, Internet, or slide presentations, the footnote should appear as a footer on each page of the document. For slide presentations the footnote should appear once, either at the beginning or end of the slide presentation.

## Use of slogans within written text

Dow uses a number of slogans in its advertising and marketing material and may use slogans on some of its products.

Some trademark rights to the slogan may be acquired by using the slogan in commerce separate and apart from the trademark registration process. These marks are called “common law” marks and rights start to accrue when the slogan becomes distinctive and associated with a particular company.

When using an advertising slogan, the slogan should be treated and used in the same manner as a trademark. Do not use the slogan as running text in a sentence.

Use slogans only for the products for which they were intended and use them consistently. For corporate-wide slogans — such as Living. Improved daily.™ — refer to the Corporate Identity Standards (Dow Keyword: Corporate Identity).

## Grade designers

Typically, a branded product line will have multiple formulations that have different compositions, or characteristics. Specific products within a branded family of products may be indicated by the use of letters or numbers following the trademark that are commonly referred to as “grade designers.”

The letters and numbers may be keyed to certain properties or characteristics of that product, such as whether it is in a solid powder form or liquid concentrate.

These letters or numbers are usually not part of the trademark. Consequently, the use of the “TM” symbol (in superscript) to provide notice of ownership follows the trademark and not the grade designer.

Incorrect: DOWFAX TG-2™ Solution Surfactant

Correct: DOWFAX™ TG-2 Solution Surfactant

## Generic descriptors

A trademark (brand name) is not the generic name of a product or chemical. Rather, the trademark identifies the source or manufacturer (i.e., the brand name under which a product is sold). The trademark must be associated with the correct generic or descriptive name of the product. Generic or descriptive names should be used in a different format than the trademark itself. The Dow standard format is to use upper/lower case font and follow the trademark on:

- The *most prominent* use in headings, titles, etc. only if space permits;
- Following the trademark *the first time the mark appears* in each section of running text in labeling, advertising copy, promotional material, literature pieces, electronic presentation materials, reports, and other printed or typed materials;
- The *first time* the mark is used on each page (or each field of vision for rolling text such as website pages).

Where possible, all efforts should be made to format the text so that the generic descriptor remains on the same line as the trademark. However, if space does not permit, it may wrap to the subsequent line. Generic descriptors include *polymers, resins, emulsifiers, surfactants, catalysts, and solvents*, to name a few.

Example: DOWPER™ Dry Cleaning Solvent

## Trademark use examples

- Where a product is co-branded, both trademarks should be marked with the “TM” symbol unless the brand has been registered together as a composite mark.

Incorrect: DOWEX UPCORE™ Ion Exchange Resins.

Correct: DOWEX™ UPCORE™ Ion Exchange Resins.

- Never use a trademark in the plural form or modify the spelling of a trademark.

Incorrect: Several UCARS™.

Correct: UCAR™ Proprietary Solvents.

- Never use a trademark in the possessive form.

Incorrect: BETAGUARD's utility.

Correct: The utility of BETAGUARD™ Sealant.

- Never use a trademark as a verb.

Incorrect: DOWCLENED that part.

Correct: Clean your parts with DOWCLENED™ solvent.

- Never use a trademark as a participle.

Incorrect: ROOFMATING.

Correct: Insulate your roof with ROOFMATE™ Insulation.

- Never compound a trademark by hyphenation with another word.

Incorrect: TRYMER-Insulation.

Correct: TRYMER™ Rigid Foam Insulation.

- Never abbreviate a trademark.

Incorrect: BETA-B.

Correct: BETABRACE™.

- Never use a trademark as a descriptive adjective to modify any words other than the proper descriptive name of the product sold by The Dow Chemical Company

Incorrect: METHOCEL. plant.

Correct: The plant that manufactures METHOCEL™ Cellulosics

- DO NOT combine or use a word trademark with other design elements, logos, or devices, unless the combined mark has received approval for use from the Trademark Department.

- Never use “Dow’s” before a trademark.

- Do not change the typeface of the DOW Diamond.



- Do not use the DOW Diamond in repetition as a pattern however, they may be repeated if separated by a distance equal to four lengths of the logo.



- Do not place photography, illustrations, text, or graphics across any part of the DOW Diamond.



- Do not use any shape or design element other than the official DOW Diamond



**Notice of ownership** — use of the Circle R “®” symbol with the Notice of ownership — use of the Circle R “®” symbol with the DOW Diamond: Use the Circle R “®” and the accompanying trademark ownership footnote line with the Circle R “®” and the accompanying trademark ownership footnote line with the DOW Diamond. The symbol must be shown in the same color as the Diamond.

The DOW Diamond may be used without an accompanying trademark reference line on the following applications:

- Business cards
- Business letterhead
- Building signs
- Flags and banners
- Apparel and promotional items

The DOW Diamond may be used on business cards and business letterhead without the Circle R “®” symbol because of space requirements.

### Use of Dow trademarks by third parties (license agreements)

Some uses of Dow trademarks are allowed without a license while others require the prior approval and a formal license agreement. Authorization for the use of any existing or newly proposed trademark of The Dow Chemical Company or joint use of a third party trademark with The Dow Chemical Company trademarks must have the prior approval of the Trademark Department.

- **Distributors:** Use of the trademark by distributors and retailers with whom Dow has an ongoing commercial relationship for the purpose of selling authentic Dow products requires prior consent but does not require license agreement.

- **Sponsors:** Use of the logos or trademarks indicating merely that Dow is the sponsor of or participant in an event does not require a license agreement. However, sponsors must comply with the Dow Corporate Identity Standards (Dow Keyword: Corporate Identity) and these guidelines.

- **Repackagers:** If a third party takes ownership of the goods and then repackages them into smaller containers for sale to consumers, and the label for the repackaged products contains Dow trademarks, then a trademark license would be required.

- **Toll manufacturers:** If a third party is performing a manufacturing step on behalf of Dow or a Dow affiliate, and the product will be returned to and be sold by Dow, then no trademark license is required. In most other cases, approval for third-party use of Dow trademarks will be given only with a formal executed license agreement. License agreements allow The Dow Chemical Company to control the authorized use of its marks and the manner in which they are used. They also allow the company to maintain quality and control over the goods being produced under that brand name.

- **Formulators:** If a third party changes or modifies the chemical make up of the product and resells using the brand name, a trademark license is required.

In most other cases, approval for third-party use of Dow trademarks will be given only with a formal executed license agreement. License agreements allow The Dow Chemical Company to control the authorized use of its marks and the manner in which they are used. They also allow the company to maintain quality and control over the goods being produced under that brand name.

### Trademark infringement

Trademark infringement occurs when goods or services of another party bear a trademark that so closely resembles a mark already owned by Dow that consumer confusion as to the source of the goods is likely. This may occur where a third party creates a product to compete with a well-established Dow product then adopts a trademark that sounds similar to Dow’s established trademark for this same product. The purchaser may be aware of the Dow trademark and have the impression that there is some affiliation, association, or endorsement of this product by Dow. Trademark infringement constitutes a form of unfair competition, and it is imperative to correct all instances in order to preserve Dow’s trademark rights.

The most valuable method for policing trademark infringement and misuse of Dow’s trademarks is Dow’s network of employees, licensees, and distributors. We rely heavily on our employees internationally and are grateful for their diligence in policing the Company’s trademarks.

#### 1. What TO DO if trademark infringement is suspected:

- Document the name and location of the establishment in which the suspected goods or services were found;
- Note the name or type of goods or services along with the price of the goods or services;
- State whether there were labels or tags on the items that indicate the source of the goods (i.e., the manufacturer, distributor, etc.);
- State the approximate number of goods offered for sale;

- If the suspected infringement is service oriented, a copy of the advertisement or brochure offering the service would be very helpful;
- Forward all information to the Dow Trademark Department in Indianapolis, Indiana, U.S.A.

#### 2. What NOT TO DO if trademark infringement is suspected:

- *DO NOT* confront the seller or supplier of the suspected infringement. By calling attention to the supplier or seller, the most probable event would be that the seller would remove the item/service from distribution temporarily, only to reappear at a later time.

#### 3. If a third party claims we are infringing its trademark:

- *DO* contact the Trademark Department immediately.
- *DO NOT* engage in any conversation or communication with the third party.

### List of The Dow Chemical Company trademarks and corresponding generic descriptors

For a complete listing of Dow trademarks worldwide, refer to the pivot table maintained on the Trademark Intranet site (Dow Keyword: Trademark). Once at the Trademark Intranet site, click on the subhead “List of Dow Trademarks”.

## Copyrights distinguished from trademarks

A trademark can be described as a brand, whereas a copyright controls the right to reproduce, publish, and display an original expression of an author. This right is granted by the federal government to protect and encourage the original expression of authors or artists in the form of words, pictures, music, etc. Original books, brochures, bulletins, catalogues, prints, labels, commercial package designs, photographs, advertisements, movies, video tapes, sound recordings, computer software, and instruction booklets that are prepared by or for The Dow Chemical Company have copyright rights that attach and are owned by The Dow Chemical Company. These rights prohibit the reproduction or copying of an entire work, or a substantial part of the work, without the consent of the copyright owner. Copyright does not protect or prevent others from using ideas, data information, inventions, processes, or methods disclosed in the work. Only the form of expression is protected by copyright.

A copyright notice is not legally required to protect an authored work. However, in instances where The Dow Chemical Company wants to offer further protection to a copyrighted work that is being publicly distributed, sold, or placed for sale, it is strongly recommended that a copyright notice, as prescribed by copyright law, be placed on every copy of the work when first published, revised, or reproduced, whether by The Dow Chemical Company or another party with the consent of The Dow Chemical Company. An example of the appropriate copyright notice is as follows:

©2012 The Dow Chemical Company

With the advent of the Internet, it is important to remind all Dow employees that NO copyrighted material should be downloaded on a company computer from the Internet. For more information, please visit our Intranet site on copyrights

(Dow Keyword: Copyright) or contact the Trademark Department.

## The Dow Chemical Company trademark policies

These policies ensure that the maximum value is realized from the Dow trademark portfolio, that the trademark portfolio is managed effectively and efficiently, and that Dow's limited trademark resources are prioritized and appropriately allocated.

**1. Use of outside trademark attorneys:** Only the Trademark Department is authorized to hire, use, and instruct outside attorneys for trademark-related matters. The Dow General Trademark Counsel may delegate this authority to other personnel within the Dow Law Departments for specific trademark matters. Dow employees may confer with outside attorneys on trademark related matters only with the prior approval of the Dow Trademark Department.

**2. New trademark use:** Before using a new trademark or product name in any country, please contact the Trademark Department. The Trademark Department must search, clear, and approve:

- Each trademark or name the business wishes to use in each country of interest; and
- Each product the trademark will be used on in each country.

This policy does not apply to the addition of new generic descriptors or grade designations (e.g., TG-2, LS, surfactant or solvent, etc.) in a country where the product name or trademark has already been approved.

**3. Trademark licenses:** Use of Dow trademarks by third parties must be approved by the Dow Trademark Department and typically requires a written license.

No license is required for distributors selling authentic Dow products. They may use the DOW trademark and DOW Diamond logo in conjunction with the sales of these authentic Dow products in literature and promotional pieces with prior approval.

In addition, no license is required for use of the trademark merely as an indication of a sponsored event, such as a Dow sponsored community event.

All other third party uses require a license from the Trademark Department.

- 4. Correct trademark use:** Correct use of Dow trademarks is essential to maintaining Dow trademarks and protecting their value to the company. All materials, including labels, advertising, literature, Internet and Intranet sites, correspondence, etc., must use and reference Dow trademarks correctly and in accordance with the Dow Trademark Use Guidelines (Dow Keyword: Trademark Use Guidelines)
- 5. Recharges for trademark-related services:** Costs associated with searching, applying for new trademarks, responding to official actions and/or opposition proceedings, and general maintenance filings, including renewal

## How to acquire a new trademark — name development and the search request form

This section will guide those assigned the responsibility of pursuing acquisition of a new trademark through the necessary steps with the project stakeholders and Trademark Department. A key question to ask before starting this process is,

*"Will this product clearly add more value to the company with a new trademark when compared to the value gained if the product were sold using an existing, registered trademark or a generic name?"*

If the answer is "No," then the trademark development process should be skipped completely. If the answer is "Yes," proceed with the following steps for **all projects** that require a trademark, regardless of whether the project is considered a strategic project.

- 1. Define strategy/product positioning/ concept:** Identify and refine the trademark strategy for acquiring a trademark for this new product offering.
- 2. Identify countries:** Identify the countries where the new product is expected to be sold, and the quarter and year that the commercialization of the new product offering is expected to occur.
- 3. Explore existing marks:** Review both the potential of line extensions of established trademarks and trademarks that may be available from the Trademark Department that may have been acquired for a different project but not used. Review the list of available trademarks with key stakeholders such as market managers, project leaders, global business director, communication managers, project stakeholders, etc.
- 4. Generate or brainstorm a list of candidates:** If existing, available trademarks are not acceptable, a new list of trademark candidates must be generated using the Good Naming Guidelines section of this manual (page 19).
- 5. Refine the list of candidates:** Consider the product concept carefully. Develop trademark candidates that convey the features and/or benefits of the product.
- 6. Develop coined, arbitrary, and suggestive trademark candidates:** In addition to candidates developed above, develop a list of coined, arbitrary, and suggestive candidates (at least two of each).
- 7. Prioritize:** Review and prioritize the list of names with key stakeholders **before** requesting an availability search by the Trademark Department. Key stakeholders must sign-off on the Trademark Request Form.

## 8. Submit Trademark Search Request Form electronically:

After prioritizing the list of potential new trademarks, complete the online Trademark Search Request Form (Dow Keyword: Trademark Search Request Form). The form must identify the goods and/or services to be used on or in association with the new trademark, the specific countries of commercial interest, and a commercial launch timetable. The form must also contain the approval or signature of the relevant business director(s). When completed and submitted, the form is forwarded electronically to the Trademark functional mailbox.

*Be sure that both a web page and an e-mail confirmation is received after submitting this online form confirming that the request was received by the Trademark Department. If both confirmations are not received, contact the Trademark Department directly to ensure that the request was properly received.*

The information in the form helps to prioritize the Trademark Department's efforts. In addition, because searches are initiated in the countries where the product will be launched in the current year, (or in order of business priority), this information often helps minimize the cost of searching, spread the cost of the filing and registration process over a period of several years, and minimize costs if the project is aborted.

## 9. Screening and clearing new trademark name candidates:

Availability searching is about 90 percent effective in identifying anticipatory marks. However, it is not 100 percent fail-safe. In some countries such as the U.S., consideration must be given not only to registered marks, but also unregistered marks which are in commercial use, namely, "common law" marks based on use in commerce. The searching process in the U.S. attempts to identify unregistered common law marks as well as registered marks.

## 10. Costs associated with obtaining new trademarks:

Budgeted costs should be at least \$2,000 USD per mark per country for searching, filing, and registration expenses, provided no objections/oppositions are filed. If objections/oppositions occur, costs could escalate above \$5,000 USD per mark per country.

Consequently, average costs per mark per country may vary from \$4,000 USD to \$10,000 USD. Multiply \$4,000 by the total number of countries where registration is desired. This will give a "ballpark" sum total for budget purposes.

## 11. Timing to search and develop new trademarks:

It is best to initiate the trademark development/screening process at least 12 to 18 months prior to commercialization.

Upon receipt of the request form, the name candidates will be screened against existing databases for obvious conflicts prior to incurring the cost of the full search report. If the candidates clear the preliminary screening, a full and more comprehensive search is ordered through outside sources. The full search is reviewed by the Trademark Department, who will provide the requestor a written *opinion of the availability* of the trademark or trademarks that were requested to be searched. Basically, there are three types of responses from the Trademark Department:

- A written legal opinion on the availability of the trademark with an availability grade. In some cases, it will be immediately clear that Dow will not be successful in registering a name candidate. In these cases, notification will be given that the trademark candidate was rejected or is unavailable. (This opinion would coincide with an availability grade of "D" or "F.")

- A written legal opinion advising that successful registration of a trademark candidate is not likely, or the chances of failure are fairly high. In the past, some businesses have proceeded with the trademark process and have successfully registered a trademark after resolving numerous oppositions and barriers, including negotiation and compensation paid to another company for the use of a trademark. However, in just as many cases, Dow has not been successful and the business expended significant resources only to restart the process. (This opinion would coincide with an availability grade of "C.")

- A written legal opinion that a candidate "appears likely" to succeed in the registration process. Sometimes, candidates are said to be "cleared" at this point. *However, it is very important to understand that this does not mean that the use of the trademark will not be opposed by another company.* At this point, it is still very early in the trademark development process. "Cleared" only means that upon a more comprehensive search, there were no citations revealed that would be an obvious impediment to registration. (This opinion would coincide with an availability grade of "A" or "B.")

At this point, the trademark registration process can either continue or be restarted, depending on the availability grade. If continuing, it will be necessary to instruct the appropriate Trademark Department representative via e-mail to apply for trademark registration in the country or countries where the product is intended to be marketed.

## Good naming guidelines

Creating a new name can be one of the most fun, exciting, and rewarding experiences during the development of a new product offering. Due to the subjective nature of the process, it can also be one of the most challenging and exasperating.

The right trademark can contribute significantly to the eventual success or failure of a product. It is important to choose trademark candidates that can be registered at reasonable cost and be protected over the lifetime of the product.

There are several different types of trademarks based on how the trademarks were developed:

- 1. Coined trademarks:** A coined trademark is a made-up or invented term intended for use as a trademark. Its sole purpose is to function as a trademark; namely, to designate the origin of the product and provide assurance as to its quality. These are often the easiest trademarks to obtain and protect because no one can argue that they were used without the owner's permission for any purpose other than to infringe upon them. Examples of Dow coined trademarks include VERSENE™ Chelating Agents, UCON™ Fluids and Lubricants, and UNIPOL™ Process Technology.
- 2. Arbitrary trademarks:** An arbitrary trademark is a word or phrase that has a specific meaning in the language of its origin, but has no meaning in connection with the type of products with which it is being used. For example, "Apple" is an arbitrary trademark for a brand of personal computer. Examples of arbitrary Dow trademarks include PREVAIL™ Engineering Thermoplastic Resins and ENGAGE™ Polyolefin Elastomers.
- 3. Suggestive trademarks:** A suggestive trademark tells something about or suggests something about the product, but does not describe the product itself. For example, BROWN BOX as a trademark for a line of brown colored luggage may suggest the color of leather and possibly the shape or use of the product. The term "BROWN BOX" does not mean luggage.

Suggestive marks are tougher to defend against infringement. Infringers may argue that they are descriptive of the products. Examples of suggestive Dow trademarks are:

INVERT™ Solvents and

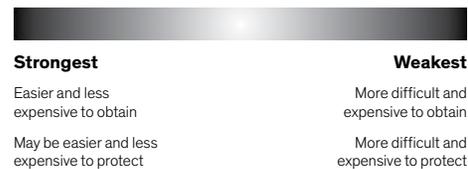
STRANDFOAM™ Plastic Foam.

**4. Descriptive trademarks:** A trademark is considered descriptive of a product or service if it immediately describes an ingredient, quality, characteristic, or feature thereof, or if it directly conveys information regarding the nature, function, purpose, or use of the product or service. Such terms are entitled to little, if any, legal protection. Often it is difficult to protect descriptive terms as trademarks because other companies must be able to use the same or similar terms in order to describe their products. If a proposed trademark is deemed descriptive by the Trademark Department, that is a good reason to select another trademark or be prepared to spend considerable money, time, and effort in trying to obtain a registration and to prevent others from using it.

**5. Generic terms:** A generic term is a word used to describe a quality, ingredient, or other characteristic of a product. A generic term is a noun — a trademark is a proper adjective. A generic term or product descriptor may once have been a trademark. Examples of U.S. trademarks that were once registered but are now considered generic are aspirin, escalator, and linoleum. Erosion of a trademark into a generic term happens when the trademark owner does not use it properly to maintain and protect its brand equity. This can occur when the trademark is used by a pioneer in a special field — the product is the first of a kind — and the trademark owner has not developed and used an appropriate generic term for the product. Proper trademark use is essential to keep a trademark from becoming generic.

**6. Strength of a trademark:** The strength of a trademark refers to its ability to be protected against infringement or use by another company or individual. The stronger the trademark, the greater our ability to protect our exclusive use of that trademark for our products. For example, coined names are the strongest trademarks since these names typically mean nothing in any language. Below is a diagram that shows a continuum of strength or protection against others' use of the name as a trademark and general costs associated with the type of trademark chosen.

Coined Arbitrary Suggestive Descriptive Generic



Most names are created by Dow employees, although in some high-value projects, external consultants may be hired to help develop just the right name for a new product. Frequently, names are created during brainstorming sessions with people closest to the customer. Occasionally, a single individual may be charged with the responsibility of developing a new name. Whichever method the Dow business decides to use to create a new name, be sure that the choices are reviewed and prioritized with key stakeholders before requesting an availability search from the Trademark Department. Each search can cost up to \$800 USD, and in some countries, the entire process can exceed \$5,000 USD. Disputes such as trademark oppositions can cost in excess of \$10,000 USD. So, limiting the searches to only those names that the team has agreed to pursue is the most efficient way to manage resources for developing trademarks.

**7. Avoid these traps:** Due to the subjective nature of the trademark development process, there are many ways that progress can be slowed or stopped cold — when it is least expected. To reduce the possibility of slowing down or having to restart the process, avoid the following pitfalls when creating and selecting new trademark candidates:

- Avoid words (or intentional misspellings of words) that merely describe the nature, quality, character, composition or uses of the product or service. Examples might include Foam Insulation or Spray Mix. These names typically are too descriptive or generic and would be very difficult to register or defend.
- Avoid geographical names and words which are surnames. Examples might include Smith's cleaner or Mediterranean wax.
- Avoid use of numerals or letters by themselves. Examples might include A1, X, III, AAA, etc.
- Avoid laudatory terms, such as Best, Supreme, Deluxe, Dependable, Finest, Preferred, Premier, Superior, Tops, Ultra, etc.
- Avoid words that could be regarded as deceptively misdescriptive of the product or service. An example might be Quickshot for a slow-acting herbicide or WaspKill for an insecticide that does not work on wasps or wasp-like insects.
- Avoid words that are identical, look like, sound like, or are otherwise similar to trademarks used by other companies for identical or similar products. For example, we would likely not be able to register the trademark BASE for products which would compete with or be sold in the same markets as products from BASF; or LuPont since we often compete with the DuPont Company. Additionally, avoid trademarks that look like, sound like, and are likely to be confused with famous trademarks belonging to other companies, such as Bugwiser, which sounds a lot like a well known trademark from a famous brewing company.

## Strategies for acquiring trademarks

Following the previous explanation about different types of trademarks and good naming guidelines, the appropriate business leaders can begin thinking about the best approach for the new product offering. Each of the strategies listed below can result in very successful trademarks (or alternative generic or product descriptive names in some cases) for new Dow products.

Generally speaking, the strategies have been arranged from the least to most expensive.

### 1. Avoid the trademark process if appropriate:

For certain generic products where no differentiation is claimed in the market from a competitive product, added expense and time involved in the trademark development process can be avoided altogether if the generic name is used in conjunction with the DOW Diamond logo and marketed under the "DOW" brand, as shown in the following example:



DOW™ Ethylene Oxide

### 2. Leverage an existing DOW trademark:

Here it is possible to adjust the grade designator or generic descriptor as necessary. Examples include line extensions marketed under an umbrella brand, such as BETAMATE™ 1496 Adhesives and Primers, BETAMATE 2096 A+B, BETAMATE 4061, etc. In these cases, the cost of trademark registration has already been incurred and the commercial value of the name may already be very high. This is particularly true if the trademark has already been registered in the country of interest. In countries where the trademark has not yet been registered, the likelihood of successful registration is increased if registrations do exist in other countries, especially if there is a relatively large number of countries in which the trademark is already registered.

Using one of the first two strategies may allow the business to leverage other resources in addition to the trademark itself. For example, printed sales literature, advertising specialties, packaging materials, and more can all be leveraged (reducing the overall cost of the new product) if they have already been created for existing generic or branded products.

- 3. Consider coined or made-up names:** Coined trademarks generally have a much higher success rate for registration because the likelihood of other names that are the same or similar is greatly reduced. Coined names typically have less if any opposition and are more likely to proceed through the trademark registration without interruption.

Coined names can be combinations of individual letters that mean nothing when combined. An example of a coined name made from combining letters is VERSENE™ which is a word that did not exist prior to its use as a trademark. Other world-famous trademarks of this type from other industries include Kodak and Exxon.

- 4. Consider arbitrary names:** Evaluate names that are unrelated to the product, but which can be associated with the product, its features, and its benefits in a positive way. Unlike coined names, unrelated or arbitrary names come with some meaning in the language of their origin. Examples of Dow trademarks in this category include PREVAIL™ Thermoplastic Resins, EMERGE™ Plastic Resins, and ENDURE™ Bactericide. Names like these provide value in the sense that they suggest mental images, thoughts, and perceptions that can be favorably associated with the product in the minds of the users. However, while these may be viewed as more “exciting” names, many other companies have also identified them as such, and they are becoming more difficult and costly to obtain. For this reason, arbitrary names should be avoided for smaller and lower value projects.

- 5. Consider suggestive names:** Perhaps the strategy that yields the highest value trademarks is to find or create names that closely match or are *suggestive* of the product concepts, features, and benefits. INVERT™ Solvents and STRANDFOAM™ Plastic Foam are excellent examples of suggestive Dow trademarks. These trademarks are not necessarily the most expensive trademarks to obtain; however they generally require a lot more thought to create. For some potentially high value product opportunities, a business may purchase consulting services for help in creating a new trademark.

### Search report availability grades

When the Trademark Department reports its findings back to the requesting business, the report contains an availability grade. These grades have been developed to help Trademark clients quickly identify the relative ease or difficulty associated with registering and defending a trademark candidate.

Availability grades are determined based on the search report analysis reviewed by the Dow Trademark staff. All trademark candidates that are submitted to the Trademark Department for searches will receive an availability grade. Each grade summarizes the findings of the search report and the opinion of the Trademark Department regarding continuation of the registration process as follows:

#### 1. Letter grades:

- **Availability grade A:** Search did not uncover any conflicting citations (trademarks owned by other companies), and the candidate appears available for application, registration, and use by Dow.

- **Availability grade B:** There were one or more citations uncovered in the search that may be an issue in registering this candidate, but upon initial review, the citations would not appear to present serious problems to the application, registration, and use of this candidate by Dow.

- **Availability grade C:** There were one or more citations or other issues that are likely problems. It may be possible to overcome these citations or issues through negotiation and settlement, submitting arguments to the appropriate Trademark Office, etc., but there is no guarantee that those arguments will be successful. These candidates typically take longer and are more costly to pursue. Citations for older trademark registrations owned by other companies might be subject to total or partial cancellation at the request of Dow if the mark is not being used for goods covered by the registration. Grade “C” candidates are a somewhat higher risk and are not recommended if use of the mark needs to commence in less than two years.

- **Availability grade D:** There were one or more citations or other issues that appear to present serious obstacles to an application for and registration of the candidate by Dow. It may be possible to overcome these citations or issues, but it does not appear likely. Barring special circumstances, these candidates should be avoided.

- **Availability grade F:** There were one or more citations or issues that will likely prevent the registration, adoption, and use of the candidate. These candidates should be eliminated from the trademark acquisition process.

- 2. Limitations of the search process:** Even with the use of availability grades, it is important to note that trademark availability searches and Dow trademark search opinions regarding continuation of the trademark registration process are subject to a number of inherent limitations, including the:

- Very subjective nature of trademark law, which governs trademark availability;
- Accuracy and completeness of the official records of the country(ies) searched;
- Accuracy and completeness of the contract search firm(s) retained by Dow; and
- Fact that not all existing trademarks are registered. In some countries (including the United States and Canada), prior rights to a trademark can be acquired through its use without registration, making similar or identical existing trademarks difficult to identify. As previously noted, these marks are called common law trademarks.

### Filing applications and the registration process

Filing an application: When the search process has been completed and the business has selected the best trademark candidate(s), an application for registration must be filed at the Trademark Office. In most countries — with counsel from the Trademark Department — use of the trademark may begin at this point for commercial purposes in the country where the application is cleared and filed. *However, even after application for registration, any use of the trademark by Dow is still subject to an opposition being filed by any third party who believes their trademark rights may be infringed. In that event, Dow could be forced to stop using a trademark during the registration process. While the risk of this occurring is reduced at this point, the possibility is still very real.*

**1. Examination of applications:** In most countries, new trademark applications are subject to examination by a Trademark Office Examiner who looks for registrations or prior applications for marks that may be confusingly similar to the mark identified in the application. In the U.S., the examination process takes about nine to 12 months. The time required for the examination process is different in each country depending on the back-log of the various Trademark Offices.

**2. Objections or oppositions to application during examination/publication:** If the examiner raises objections and/or if third parties oppose the registration, the registration will be delayed until such objections/oppositions are resolved in Dow's favor. Obviously, objections and/or oppositions not only delay the registration process, but also increase the costs of the process and could delay launch of the new product.

If the examiner does not identify any potentially conflicting marks, then the application is published for others (third parties) to file objections. Registration will be granted if the examiner does not raise any potential obstacles, and if third parties do not oppose or object to the registration of the proposed mark.

**3. Responding to official actions:** It is imperative that Dow market managers, communication managers, or other appropriate business contacts assist in providing any additional information to the Trademark Department as may be required in the event an opposition is filed to Dow's use of a trademark. Or, if the Trademark Office (of a country or countries where the application was filed) objects to the application and issues an official "Office Action." Office actions describe the reasons for the objection or rejection, and include statutory deadlines for responses to be filed; otherwise the rejection of the application becomes final. It is critical that necessary information be provided to the Trademark Department as soon as possible in order to meet the deadline requirements.

**4. Commercialization of the product:** Commercialization of the product under a proposed mark prior to the first examination by the Trademark Office and publication of acceptance of an application creates the risk of potential mark infringement/unfair competition claims being filed against the use of the proposed mark. This would disrupt, if not hinder, a commercial launch with the added expense of relabeling, repackaging, and changing promotional literature if the objections/oppositions are well founded. However, commercialization of trademark name candidates that have been cleared for use by Dow with an availability grade of "A" or "B" can begin immediately with an acceptable degree of risk. Candidates cleared with a "C" availability are a somewhat higher risk and may not be recommended for commercialization prior to acceptance by the Trademark Office.

In most countries, Dow will need to document commercial use of the trademark. Typically, this means that the appropriate business contacts may be asked to help provide evidence of commercial use of the product. Evidence can include invoices documenting the first sale of the product, actual product labels, sales brochures, etc. Please be prepared to assist and send this information to the Trademark Department upon request.

**5. Trademark registration obtained:** As previously stated, registration will be granted if the examiner does not raise any potential obstacles, and if third parties do not oppose or object to the registration of the proposed mark.

When the trademark becomes registered, the appropriate business contacts will be requested to assist with promoting proper use of the new trademark within Dow and with outside interests such as customers, the media, etc.

## Trademark renewal process and criteria for renewing

Trademark registrations expire at the end of a 10-year period (20 years in some countries) from the date the registrations are granted. Renewal applications must be filed and renewal fees must be paid prior to the end of the expiring period in order to maintain the registrations in force. The Dow Chemical Company has developed the following procedures and set certain criteria for the renewal of its trademarks:

**1. Procedure:** The trademark paralegal will provide the appropriate business leader, market manager, or trademark focal point with a listing of the trademarks coming due for renewal for the entire coming year. The business leader should review the list of marks and forward comments back to the appropriate paralegal in a timely manner.

The trademark paralegal will initiate the renewals provided the following criteria are met.

**2. Criteria:** In order to meet the renewal criteria, at least one or more of the following conditions must be present:

- Sales of products bearing the trademark exist in the country where the trademark is being evaluated for renewal.
- The business plans to commercialize products bearing this trademark.
- The mark is a global mark having in excess of \$30MM USD in sales in more than one country.
- The trademark should be maintained as a defensive mark, as determined by the trademark counsel/paralegal and the business desires to preclude imitation products.
- The mark is licensed to a third party.
- There is a significant business need that justifies the cost of the renewal. Generally, renewals require filing a new application with a range of costs between \$700 to \$1,000 USD per mark.

## Contacting the Trademark Department Staff

The Dow Trademark Department is located in Indianapolis, Indiana, U.S.A. It is made up of a trademark counsel (attorney), trademark paralegals, office professionals, and a docketing clerk. The following are brief summaries of their roles, which should help you connect with the right person for any of your questions.

### General trademark counsel

**Joe Miller** is counsel for trademark and branding strategies, infringement matters, negotiating trademark licensing and assignments, trademark issues related to mergers and acquisitions, and copyrights. He is also responsible for managing the Trademark Department Staff.

Contact Joe Miller via email at [cjmill@ Dow.com](mailto:cjmill@ Dow.com) or by phone at 1-317-337-4584.

### Trademark paralegals

**Paralegals** are responsible for trademark prosecution; searching; obtaining and maintaining Dow and its affiliated companies' trademarks on a global basis, as well as Dow AgroSciences (DAS) trademarks; and trademark review for proper usage.

**Linda Chisholm** — [lkchisholm@dow.com](mailto:lkchisholm@dow.com) or 317-337-4606. Primary contact for Dow trademarks for Specialty Materials; Dow Automotive; Elastomers; Wire & Cable; PU Systems & Epoxy Systems; and Dow Wolff Cellulosic; and Dow AgroSciences markets in Europe, Asia and Africa.

**Mary Mason** — [mmason@dow.com](mailto:mmason@dow.com) or 317-337-4575. Primary contact for Dow trademarks for Chlorinated Organics; Epoxy; Performance Materials; and Dow Microbial Control; Dow AgroSciences in Mexico, Central and South America; and Trademark licensing.

**Jackie Pearlman** — [jpearlman@dow.com](mailto:jpearlman@dow.com) or 215-592-3678. Primary contact for Dow Advanced Materials (HROH); Electronic Materials; and Coatings.

**Kari Lukasik** — [klukasik@dow.com](mailto:klukasik@dow.com) or 317-337-4895. Primary contact for Dow trademarks for Building & Construction; Oil & Gas; and FILMTEC®; Dow AgroSciences markets in USA, Canada, Australia, New Zealand, Japan, South Korea, Thailand and Vietnam; and Copyrights.

**Heather Schuyler-Crespo** — [nschuyler@dow.com](mailto:nschuyler@dow.com) or 317-337-5253.

### Trademark assistants

**Kathy Broshous** and **Tamala Jones** maintain trademark files for Dow and its subsidiaries; enter data into CPI Trademark Database; process invoices and track costs; provide administrative support to the trademark counsel and paralegals.

Kathy Broshous — [kabroshous@dow.com](mailto:kabroshous@dow.com) or 317-337-4834

Tamala Jones — [tmjones@dow.com](mailto:tmjones@dow.com) or 317-337-4843

For matters relating to copyrights, please contact Joe Miller or Kari Lukasik. Also see the intranet Keyword "Copyright."

## Frequently asked questions about the trademark process

**Q:** How long does it take to get a trademark registered?

**A:** The time it takes to register a trademark varies from country to country. A few countries automatically grant trademark registration as soon as the trademark registration is applied for (though in these countries registrations can still be successfully opposed by other interested parties). In most countries, there is some period of time, generally one to two years, between the date when the application is filed and when a trademark registration is granted. In the United States, this period is typically about one year but can last as long as three years.

**Q:** How much does it cost to acquire a trademark?

**A:** It depends on the size and scope of the naming project. While it would be misleading to provide an absolute cost figure, a generalized estimate of \$4,000 USD per mark per country can be used. Other costs that can be incurred include using a consultant to help create a name. This will quickly add thousands to the cost of acquiring a trademark. Similarly, using focus groups and market research to help prioritize the trademark candidates will also add significant cost to the process. Submitting long lists of trademark candidates that have not been prioritized will add unnecessary cost to the process as well. And, not following good naming guidelines can cause additional cost, because it increases the potential of running into opposition from third parties and having to restart the process.

**Q:** The trademark folks reported that this name was "cleared," then they said the mark encountered obstacles and couldn't be used after use had already begun. Why does this happen?

**A:** The term "cleared" refers to the fact that a search was performed to determine if there were any *obvious* barriers to successful

registration of the trademark. This availability process has approximately a 90 percent accuracy rate. However, it is still quite possible that the Trademark Office could reject the mark or a third party could oppose its use by Dow, causing the Company to abandon its pursuit of a particular name. Until the name is registered as a trademark and has passed some period of incontestability (provided the mark was properly used), there is some risk of losing it.

**Q:** Does the online form have to be used to submit the trademark search request, or will a simple e-mail work?

**A:** The online form *must* be used to submit the request. The form ensures that *all necessary information* is provided to the Trademark Department staff so that the request can be processed quickly and efficiently. Omitting any portion of this data will slow the entire process down. Additional data from the form helps track information about each trademark search request, enabling us to measure and report on important aspects of the process. In addition, submission of the form ensures that the request will be entered into the Trademark Department electronic docketing system for more efficient handling of the request. Access the Search Request Form at Dow Keyword: Trademark Search Request Form.

## Trademark websites and other resources

Here is a brief but helpful listing of Intranet and Internet based links which you may find helpful as you work through the trademark development process:

Dow Keyword: Trademark

United States Patent and Trademark Office:  
<http://www.uspto.gov/>

World Intellectual Property Organization:  
<http://www.wipo.org/>



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