

# Martini In The Morning Trademark and Logo Usage Requirements

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## Introduction

Trademarks are intellectual property, with value both to us at Martini in the Morning and to our community of customers and supporters.

Trademarks are words or symbols (and less commonly colors, sounds or scents) used to identify the source of products, technologies, programs and services, enabling customers to distinguish one provider's offerings from another's. When we say "products" in these guidelines, we mean all types of offerings, ranging from commercial products and services to music streams and informational web sites. Trademark law protects the public's ability to rely on trademarks for information about product source and quality, requiring trademark owners to take steps to police proper use of their marks. We provide these Martini In The Morning Trademark and Logo Usage Requirements ("guidelines") as part of a comprehensive program to satisfy this obligation, and to help you and all of our community members make proper use of our marks consistent with these guidelines and the law.

These guidelines are for anyone using or referencing Martini In The Morning's trademarks, particularly users outside of Martini In The Morning.

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## Overview of Trademark Law

We are providing a general overview of trademark law to help you understand the guiding principles and goals of these guidelines. This summary and the guidelines are not legal advice.

**What does trademark law protect?** Trademark law protects the public's ability to rely on trademarks for information about the source and quality of products, services, programs and technologies. To protect the public from misleading or confusing information, the law requires trademark owners to monitor proper use of their marks and to "police" against use of identical or closely similar marks for similar goods, services, programs or technologies. Trademarks are compared based on similarities or differences in sight (visual appearance), sound, and meaning, as well as other factors such as whether the products are related. A mark that looks similar, sounds similar, or has a similar meaning to an established mark and that is used on similar products might be an infringement.

Not all uses of a trademark result in potential confusion. Martini In The Morning allows and even encourages many "fair uses" of its trademarks.

**What is a service mark?** A "service mark" is a trademark that indicates the source of a service or program, rather than a product. In these guidelines, we use the term "trademark" to refer to both trademarks and service marks. Many trademarks apply to a wide spectrum of offerings, including both products and services, from the same source.

**What is trade dress?** "Trade dress" describes a collection of attributes or features of a product or service (often its overall presentation) and/or its packaging. Trade dress can include color palettes, patterns and textures of material or packaging, or other thematic elements that collectively indicate the source of the product or service to the public.

**What is a fair use?** Referring to someone else's trademark in a way that does not confuse the public or tarnish the mark may qualify as "fair use." Examples include discussions of a product by name in a news article, product review, or comparative advertising. To make a "fair use," you must accurately identify the original product or service without misleading the public about its source or its affiliation with your own products or services. Using someone else's trademark as the name of your own product or service (including freeware or free information services) is never fair use. U.S. law does not recognize any fair use of logos. If you want to use one of our logos, you will need a permission or license.

**How do owners establish trademark rights?** In the U.S. and some other countries that recognize "common law" rights, an owner can establish trademark rights simply by using a mark in connection with products or services. (No rights will be established if the mark infringes an existing, or senior, mark.) Outside the U.S., most countries require a user to register trademarks with the national trademark office (a government agency), before rights are recognized.

**What is an infringement?** Infringement occurs when someone (the "junior user") uses a trademark that is identical or confusingly similar to an existing trademark (the "senior trademark") owned by a senior user, on similar goods, services, products or technologies without permission or a license from the senior user. Courts use many factors to evaluate the likelihood that the public would be confused about the source of either trademark user's products or the relationship between the two trademark owners. The infringement can be intentional, e.g., when the junior user is counterfeiting goods, or inadvertent, e.g., when the junior user is trying to make fair use, but doesn't satisfy all the legal requirements.

**What is required for a trademark license?** A trademark owner may license the use of a trademark to other companies or individuals for use on their own products. The license agreement must allow the trademark owner the right to control the quality of the licensee's products by setting and enforcing quality standards.

**How can you trademark words in the dictionary?** It all depends on how close the trademark owner's products are to the dictionary definition. For example, apples (the fruit) do not have anything to do with computers, so Apple is a distinctive, strong mark for computer products and services, identifying one unique source of those products and services. The mark Apple would be a little less strong, but still protectable for the hypothetical company, Apple Healthcare because there is a logical association between apples and health (the saying "an apple a day keeps the doctor away"). Since the word "apple" does not directly describe health care services, it can still identify one unique source of those services. No fruit grower, however, could claim exclusive trademark rights in the name "apple" for its fruit. "Apple" is a generic term in that industry and is not protectable as a trademark. It does not identify any unique source of the fruit. For this reason, no one apple grower can trademark

the word "apple" and prevent competitors and other members of the industry from using it in their company and product names.

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## Overview of Martini In The Morning's Trademark Guidelines

Please follow these guidelines in making use of our marks.

1. **Trademarks are adjectives.** Use them, at least in your initial and most prominent references and otherwise as needed for clarity, with generic nouns that identify a Martini In The Morning product, program, or service.
2. **Martini In The Morning trademarks cannot be included in the name of any third party product, technology, program or service.** This includes free and educational materials, open source distributions, and the titles of informational web sites. Have fun and come up with a creative new name for your product!
3. **Mark and attribute Martini In The Morning trademarks.** When making fair use of Martini In The Morning trademarks, mark and attribute them as outlined in these Guidelines.
4. **You may only use Martini In The Morning logos by permission.** To receive permission and guidelines email [MandM@martiniinthemorning.com](mailto:MandM@martiniinthemorning.com)

Keeping Martini In The Morning trademarks strong helps our entire music community. Please let us know if you see our trademarks used in a way that does not conform to these guidelines.

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## Naming and Presentation of Products and Services

Trademark law applies equally to commercial products and services and to offerings that are free, not for profit, educational, or purely informational. Including a Martini In The Morning trademark in the name of a product or service not from Martini In The Morning can confuse consumers and violate the law. The following guidelines explain in greater detail when and how you can use Martini In The Morning trademarks in relation to your products.

**Sight, Sound, and Meaning:** Trademark protection extends to its sight, sound and meaning. Do not adopt a trademark that has a similar look, sound, or meaning to a Martini In The Morning trademark.

- **DO** come up with a unique and compelling name for your product, or simply choose a purely descriptive name. It's always a good idea to get an independent legal opinion about the availability of the name you choose.
- **DO NOT** adopt similar looking, sounding, or meaning trademarks, such as a) a logo with a lounge lizard because it looks similar to Lenny or b) "Martini In The Evening" because it sounds similar to Martini In The Morning.

**Descriptions of Your Products:** You may use a separate, explanatory phrase or tagline after your product name that describes how your product ("**product**" here and throughout the guidelines includes services and programs, as well as distributions and websites) relates to one of Martini In The Morning's. When you do so, be sure that a) the source of each product is clear, b) the statement is accurate and not misleading, c) the Martini In The Morning trademark is used less prominently than your trademark, d) you use the Martini In The Morning trademark as an adjective followed by a generic noun, and e) you follow the marking and attribution rules set forth in these guidelines.

- **DO** include a Martini In The Morning trademark to describe how your product or service relates to a Martini In The Morning product or service.
- **DO NOT** include a Martini In The Morning trademark in the name of your product or service, as in "Martini In The Morning Lounge."
- **DO** include a tagline after the title to explain the relevance to Martini In The Morning products or services.
- **DO NOT** include a Martini In The Morning trademark in the title of your item.

**Marking:** When you use one of our trademarks, properly mark and attribute it to help minimize the risk of consumer confusion. On each document incorporating one of our marks, place the ™ symbol directly following our mark the first time the mark is used prominently (as in a headline, title, or graphic), and the first time it is used in plain text. Do not use the circle-R symbol (®) when marking Martini In The Morning trademarks. It has a specific meaning that is not always appropriate.

- **DO** properly mark Martini In The Morning trademarks, as in "Martini In The Morning™ music stream available."
- **DO NOT** claim rights in the whole phrase that includes a Martini In The Morning trademark, as in " Martini In The Morning music stream available™."

**Attribution Notice/Legal Notice:** Unless you have an agreement with Martini In The Morning that says something else, attribute our trademarks using the following notice: " Martini In The Morning, Lenny, Lounge Lizards in Exile, the Martini In The Morning Logo [insert all other Martini In The Morning trademarks referenced in the document] are trademarks or registered trademarks of Martini In The Morning in the United States and/or other countries."

- **DO** include a notice on a single page, linked from all pages that contain Martini In The Morning trademarks (such as with a "legal" or "trademarks" link in the footer) if you are working on the web. For printed materials, place the notice in an appropriate location with other legal notices (e.g., on the title page of a book, in the footnotes of a white paper, on the last slide of a presentation, etc.).
- **DO NOT** rely on a web footer link to provide attribution for downloadable documents and software downloads that are posted on that site. Because they will ultimately be viewed separately from that attribution, they must contain their own notice.

**Trade Dress:** Martini In The Morning trade dress may not be used by third parties for their own products or web sites. Take care to ensure that your product line, packaging, advertising or web site does not adopt a look that is confusingly similar to any of Martini In The Morning's.

**Code Names:** Code names are popular in the software industry, to allow development teams to refer to their project before an official name is selected. Public use of code names can infringe the rights of a trademark owner if the code name includes another's trademarks. Increasingly, code names are used publicly on community software development efforts or in early access versions for testing. To be safe, avoid inclusion of other company's trademarks in your code names.

## Use of Martini In The Morning Logos

Third parties may not use any Martini In The Morning logo for any purpose without a license to do so. This includes all Lenny, Lounge Lizards in Exile, the Martini In The Morning logo items, and all other product and program logos.

If you are granted a license to use a Martini In The Morning logo, you are provided with artwork, which you may not modify in any way, other than sizing it to fit appropriately in context. Unless your license specifically allows you to do so, you may not combine a Martini In The Morning logo with other logos or artwork, or replace or remove a Martini In The Morning logo from a product for resale.

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## Special Issues On The Web

**Web Sites Are Services:** Trademark law considers all web sites to be services – from e-commerce, to community sites, to blogs and personal home pages. The name you adopt for your site is a trademark, regardless of whether the site is educational, free, non-commercial, or purely informational. Do not incorporate a Martini In The Morning trademark item into the name of your site.

**Trademark Symbols on the Web:** When using Martini In The Morning trademarks on the web, you should follow your standard practice with respect to marking and attribution. If you mark or attribute any other third party trademarks, please do the same for Martini in the Morning's. To generate the ™ character in HTML code, use ASCII character code 153 (™).

**Blogs and other Informal Content:** We understand and embrace the fact that a variety of content on the Internet is informal, and that strict adherence to all of these guidelines may be inappropriate. If you operate an informal web site service such as a blog, you can use a conversational tone, in which you may not always use nouns or trademark symbols with Martini In The Morning marks, and so on. To take advantage of this exception, please make sure that your site adheres to the rest of these guidelines.

**YouTube, MySpace, and other User-Contributed Content:** You are responsible for content you submit to YouTube, MySpace, SecondLife, wikis, forums, and other user-contribution sites. If you create content for any online source, make sure that your use of Martini In The Morning trademarks is consistent with these guidelines. Administrators of such sites are responsible for removing infringing content once it is identified. Making certain your content only makes appropriate use of Martini In The Morning trademarks can help prevent it from being removed.

- **DO** include truthful and accurate representations of Martini In The Morning trademarks (such as a video clip that shows a Martini In The Morning logo or content).
- **DO NOT** include mock or parody products in your content with names based on Martini In The Morning trademarks.

## Special Rules for Publications, User Groups, and Conferences

Martini In The Morning encourages the community to seek out and share information about Martini In The Morning. To facilitate this dialog, under the following circumstances, Martini In The Morning word marks may be used in the titles of publications, user groups, and conferences. Please use word marks, e.g., Lounge Lizards in Exile, only. Please do not use our font, stylization or logos.

**No Proprietary Names.** Please do not incorporate other proprietary or commercial names in titles of publications, user groups or conferences that incorporate Martini In The Morning trademarks.

**Follow All Other Rules:** The exceptions for naming publications, user groups and conferences is only available if the rest of these guidelines are followed, including marking with symbols, attribution and use of nouns.

**Publications:** When using Martini In The Morning word marks in naming publications, such as articles for books or magazines, it is important that you do not create confusion as to source of your publication or any affiliation with Martini in the Morning. The publisher's name should appear prominently in a location that is customary in the publishing industry.

- **DO** include a customary identification of the non-Martini In The Morning source of your materials. For example, books typically include publisher information and logos on the spine and title page, which may be less physically prominent than the title.
- **DO NOT** attempt to claim trademark rights in the whole name of your publication by marking it with a trademark symbol or applying for registration with a trademark office.
- **DO** include the customary attribution of Martini In The Morning's trademark rights in an appropriate location.

**User Groups.** Using a term in the name such as "user group," "special interest group," "lobby," etc., makes clear the relationship between Martini In The Morning and the group, and does not create confusion about the source of products. It is a fair use. In user group names, it is not necessary to include an extra noun that identifies the Martini In The Morning product (e.g., "Lounge Lizard User Group" is acceptable). It is also not necessary to use a space between our trademarks and the generic term identifying the group (i.e., "MitMUserGroup" is acceptable). These exceptions apply only to user groups that are not formally doing business as commercial entities. If you are administering a user group that includes a Martini In The Morning trademark in its name:

- **DO NOT** claim any trademark rights in the name or attempt to register the name or your logo with a trademark office;
- **DO NOT** register the name as a trade name or business name, or conduct any business under the name (e.g., do not register domain names under your user name).

**Merchandise:** Martini In The Morning does not object to parties whose names include a Martini In The Morning trademark as authorized by these guidelines and approved in advance by a member of the Martini In The Morning staff producing limited runs of merchandise bearing their names under some circumstances. You may include your name on T-shirts, coffee mugs, mouse pads or other promotional items, so long as you do not make more than 200 units, or offer products for commercial sale.

### **Contacting Martini In The Morning**

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