

# **WERBiage: From the NIST Washington Editorial Review Board**

## **The Big III™: Disclaimers & Trademarks**

In the last WERBiage column, we surveyed the “Big III” policy issues that affect virtually all manuscripts submitted to WERB. In this month’s column we begin a more detailed description of these items. The least complicated of the big three policy issues to deal with is usage of commercial names and trademarks in NIST manuscripts.

**What NIST does not allow:** NIST policy does not allow manuscripts intended for public consumption to suggest, explicitly or otherwise, that any named commercial entity or product is 1. endorsed or recommended by NIST, 2. preferred by NIST, or 3. is considered by NIST to be superior to any other product of like kind.

**But, sometimes identification is necessary.** NIST policy recognizes that full and adequate description of reported measurements in scientific studies may require identification of materials, instruments, or software, etc., and their suppliers, which often are branded or otherwise commercial in nature. Some journals require such “protocols,” and NIST allows these identifications— as long as they are accompanied by proper disclaimers.

**How do I write a disclaimer?** An adequate disclaimer must incorporate all three elements listed above. The following is an acceptable template: The full description of the procedures used in this paper requires the identification of certain commercial products and their suppliers. The inclusion of such information should in no way be construed as indicating that such products or suppliers are endorsed by NIST or are recommended by NIST or that they are necessarily the best materials, instruments, software or suppliers for the purposes described.

**Do I really need to include all of that stuff?** In a word, yes. Some variation is allowed, of course (for example, if no mention of commercial software is made, etc., that reference can be dropped.)

**Where should I put the disclaimer?** The first choice is a footnote at the first mention of a company or brand name. However, not all journals allow such footnotes. The next best choice is as a numbered citation in the list of references, again at the first appropriate place. The worst choice is in the Acknowledgement. Aside from being an inappropriate location, it is also the most vulnerable to an editor’s blue pencil. In bound reports, such as NIST IRs, disclaimers usually go on or near the title page.

**I put in a disclaimer, but the editor removed it** This happens, and there is nothing NIST can do about it. Nevertheless, the disclaimer is required for WERB approval.

**How do I know if a name actually is a brand name, e.g., Nylon, Unix, Java?** Authors are responsible for finding out. Nylon is a “dead” (expired registration) trademark and may be treated as generic but specific types of nylon are “live” brands. Unix (The Open Group) and Java (Sun) are live trademarks.

**If I include a disclaimer, then can I say that our measurements indicated that product A performed better in our tests than product B? No. When I refer to brand names, must I include the ® or ™ symbol?** No. In fact, WERB strongly discourages using ®. Specifically, the ® means—and only means—that the name it is affixed to is a trademark registered with the U.S. Patent and Trademark Office. It is not part of the brand name, contrary to common representations by companies, and no law requires its usage. It is solely for the benefit of the trademark owner to inform (i.e., warn) others that it is registered and cannot be used as a brand name by anyone else. If it is affixed as a “courtesy” in written material, then the trademark owner must be fully identified (e.g., DynoMight® is a registered trademark of Oops Chemicals, Inc.) and then need only be used once. NIST has no policy relating to courtesy usage. You should be aware that many newspapers, including *The New York Times* and *The Washington Post*, forbid the use of ®, except in advertising. Most scientific journals have no policy regarding its usage.

**Can I use the ® with NIST’s trademarks?** Yes. SRM ® (SRM is a registered trademark of NIST), etc. are allowed.

**So what about ™?** ™ is not a symbol of the USPTO or any other government or accrediting agency. It has no legal meaning whatsoever and can be affixed to any name or word of your choice. (Some manufacturers use this symbol to indicate a “pending” registration with the USPTO, but there is no such official status.) WERB™ does not allow its usage.

—Norm Berk WERB Chair