



Department of Defense INSTRUCTION

NUMBER 5535.12

September 13, 2013

Incorporating Change 1, April 29, 2020

ATSD(PA)

SUBJECT: DoD Branding and Trademark Licensing Program Implementation

References: See Enclosure 1

1. PURPOSE. This instruction implements the DoD Branding and Trademark Licensing Program pursuant to DoD Directive (DoDD) 5535.09 (Reference (a)), section 2260 of Title 10, United States Code (U.S.C.) (Reference (b)), and sections 1051 through 1127 of Title 15, U.S.C. (Reference (c)), in accordance with the authority in DoDD 5122.05 (Reference (d)), to provide oversight, assign responsibilities, and prescribe procedures of the program.

2. APPLICABILITY. This instruction applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this instruction as the “DoD Components”).

3. POLICY. It is DoD policy in accordance with Reference (a) to establish and maintain a program to license marks owned or controlled by DoD Components, to protect such marks from unauthorized use, and, at the discretion of the OSD and DoD Components concerned, to register such marks with the United States Patent and Trademark Office (USPTO) when doing so is in the best interest of the DoD.

4. RESPONSIBILITIES

a. Assistant to the Secretary of Defense for Public Affairs (ATSD(PA)). The ATSD(PA):

(1) Issues guidance to the OSD and DoD Components regarding the licensing of marks and the operation of a trademark licensing program as is necessary to carry out the policies and objectives set forth in Reference (a) and this instruction in accordance with Reference (b).

(2) Establishes policies and procedures to govern, register, protect, and license OSD Component marks.

(3) Designates a Manager, DoD Branding and Trademark Program, from within the Community and Public Outreach Directorate to provide general oversight of the DoD Branding and Trademark Licensing Program in accordance with paragraph 1 of Enclosure 2.

b. OSD and DoD Components Heads. The OSD and DoD Components heads, at their discretion, establish trademark licensing programs within their Components, and issue additional guidance as needed to operate such programs in accordance with References (a), (b), (c), and this instruction, and shall designate a program manager to oversee each trademark licensing program operating within their Component and to serve on the DoD Trademark Licensing Program Working Group.

c. General Counsel of the Department of Defense (GC DoD). In addition to paragraph 5b of this enclosure, the GC DoD, provides guidance and counsel to the Manager, DoD Branding and Trademark Licensing Program, and designates a representative to serve on the OSD Component Trademark Council in accordance with paragraphs 3c and 3d of Enclosure 2.

d. Under Secretary of Defense (Comptroller) (USD(C)/Chief Financial Officer (CFO), Department of Defense; Secretary of the Army; and Director, Washington Headquarters Services (WHS). In addition to paragraph 5b of this enclosure, the USD(C)/CFO; the Secretary of the Army; and the Director, designate a representative to serve on the OSD Component Trademark Council in accordance with paragraphs 3c and 3d of Enclosure 2.

e. Director, Defense Finance and Accounting Service (DFAS). The Director, DFAS, establishes procedures for the management of trademark licensing funds in accordance with References (a) and (b), DoD 7000.14-R (Reference (e)), and this instruction.

5. PROCEDURES. See Enclosure 2.

6. RELEASABILITY. **Cleared for public release.** This instruction is available on the Directives Division Website at <https://www.esd.whs.mil/DD/>.

7. SUMMARY OF CHANGE 1. The change to this issuance updates references and removes expiration language in accordance with current Chief Management Officer of the Department of Defense direction.

8. EFFECTIVE DATE. This instruction is effective September 13, 2013.

A handwritten signature in black ink, appearing to read "George E. Little". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

George E. Little
Assistant to the Secretary of Defense
for Public Affairs

Enclosures

1. References
2. Procedures

Glossary

ENCLOSURE 1

REFERENCES

- (a) DoD Directive 5535.09, "DoD Branding and Trademark Licensing Program," December 19, 2007
- (b) Sections 112 and 2260 of Title 10, United States Code
- (c) Sections 1051 through 1127 of Title 15, United States Code
- (d) DoD Directive 5122.05, "Assistant To The Secretary of Defense for Public Affairs (ATSD(PA))," August 7, 2017
- (e) DoD 7000.14-R, "Department of Defense Financial Management Regulations (FMRs)," Volumes 1-15, date varies per volume
- (f) Defense Finance and Accounting Service Instruction 5535.1-I, "Management of DoD Branding and Trademark Licensing Revenues," March 9, 2012
- (g) DoD Instruction 5105.18, "DoD Intergovernmental and Intragovernmental Committee Management Program," July 10, 2009, as amended
- (h) Part 2635 of Title 5, Code of Federal Regulations
- (i) Sections 506 and 1017 of Title 18, United States Code
- (j) DoD Directive 5410.18, "Public Affairs Community Relations Policy," November 20, 2001
- (k) DoD Instruction 1015.15, "Establishment, Management, and Control of Nonappropriated Fund Instrumentalities and Financial Management Supporting Resources," October 31, 2007, as amended
- (l) DoD Instruction 8170.01, "Online Information Management and Electronic Messaging," January 2, 2019
- (m) DoD Manual 4160.21, "Defense Materiel Disposition," October 22, 2015, as amended
- (n) DoD Directive 5110.04, "Washington Headquarters Services (WHS)," March 27, 2013
- (o) DoD Instruction 1015.10, "Military Morale, Welfare, and Recreation (MWR) Programs," July 6, 2009, as amended

ENCLOSURE 2

PROCEDURES

1. MANAGER OF THE DOD BRANDING AND TRADEMARK LICENSING PROGRAM.

The Manager, DoD Branding and Trademark Licensing Program, provides general oversight of the DoD Branding and Trademark Licensing Program and will:

- a. Issue additional program guidance as needed in accordance with References (a), (b), (c), and this instruction.
- b. As needed, review accounting reports maintained by OSD and DoD Components pursuant to Volume 12, chapter 31 of Reference (e) and DFAS Instruction 5535.1-I (Reference (f)).
- c. In accordance with DoDI 5105.18 (Reference (g)), establish and chair a DoD Trademark Licensing Program Working Group composed of full-time or permanent part-time federal employees; the Working Group shall operate as outlined in paragraph 2b of this enclosure.
- d. In accordance with Reference (g), establish and chair an OSD Component Trademark Council comprised of full-time or permanent part-time federal employees; the Council shall operate as outlined in paragraphs 3c and 3d of this enclosure.
- e. Assist the OSD and DoD Components as appropriate when requested to advise on matters related to the operation of a trademark licensing program in accordance with Reference (a) and this instruction.
- f. In coordination with the DoD Office of the General Counsel (OGC) and the OSD Component concerned, provide guidance on actions that may be taken to protect OSD Component marks when an unauthorized use of the marks is discovered.
- g. In coordination with DoD OGC and the OSD Component(s) and/or DoD Component(s) concerned, facilitate action as appropriate to protect DoD marks when an unauthorized use of the protected marks of more than one DoD Component, or a combination of the marks of an OSD Component and the marks of a DoD Component, is discovered.
- h. In coordination with the OSD Components, maintain a complete roster of OSD Component marks.

2. TRADEMARK LICENSING PROGRAM REQUIREMENTS AND PROCESS

- a. Each OSD and DoD Component shall provide oversight and management of all marks owned or controlled by the Component. This includes but is not limited to establishing policies for the creation of marks for official use; monitoring marks for, and protecting them against,

unauthorized use; and, as appropriate, licensing marks for authorized use by non-DoD entities, and registering marks with the USPTO.

b. Members of the DoD Trademark Licensing Working Group shall consist of the program manager of each DoD and OSD Component trademark licensing program. The attorneys who are the principal legal advisors to program managers on trademark matters may also participate as full members of the Working Group. The Coast Guard, when it is a Service in the Department of Homeland Security, may participate similarly in the proceedings and meetings of the Working Group. The Manager, DoD Branding and Trademark Licensing Program, may, from time to time, solicit the views and assistance of technical advisors as necessary to meet the requirements and goals of Reference (a) and this instruction. The purpose of the Working Group is to encourage implementation of common procedures and policies across all DoD organizations operating trademark licensing programs and to facilitate internal communication on issues that apply to the joint DoD trademark licensing community. The DoD Trademark Licensing Working Group shall meet monthly.

c. OSD and DoD Components operating a trademark licensing program shall, to the extent it is practical and appropriate, strive to develop common requirements that must be met by licensees to secure licenses for DoD marks, royalty rates to be paid on the sale of licensed products or services, and product quality standards that are appropriate for the type of product or service being licensed.

d. In accordance with subpart 2635.702 of Title 5, Code of Federal Regulations (Reference (h)), DoD marks may not be licensed for use in a manner that creates a perception of DoD endorsement of any non-federal entity or its products and services. DoD marks may not be licensed for any purpose intended to promote ideological movements, sociopolitical change, religious beliefs (including non-belief), specific interpretations of morality, or legislative/statutory change. Marks may not be fraudulently or wrongfully affixed pursuant to sections 506 and 1017 of Title 18, U.S.C. (Reference (i)).

e. DoD marks may not be licensed for use in a manner that would reflect negatively on the DoD; degrade the name, reputation, or public goodwill of the DoD Components; or be contrary to community relations objectives established in DoDD 5410.18 (Reference (j)).

f. The program manager of each OSD and DoD Component trademark licensing program shall ensure the program under his or her control is operated in compliance with the following financial management and reporting requirements:

(1) A complete and accurate accounting of all trademark licensing fees received by the Component, including the disposition of such fees, shall be maintained in accordance with Volume 12, chapter 31 of Reference (e) and Reference (f).

(2) Ensure all monies received from trademark licenses are safeguarded, recorded, and promptly transferred to the Component's DFAS Budget Clearing (Suspense) Account for Trademark Licensing in accordance with Volume 12, chapter 31 of Reference (e) and Reference (f).

(3) Upon request, all accounting records required under Volume 12, chapter 31 of Reference (e) and Reference (f) shall be reported to the Manager, DoD Branding and Trademark Licensing Program.

g. Trademark licensing fees shall only be used for:

(1) Payment of the costs of securing trademark registrations and the costs of operating the licensing program as those costs are defined in the Glossary of this instruction.

(2) OSD or DoD Component morale, welfare, and recreation (MWR) activities to the extent (if any) that the total amount of the licensing fees available in a fiscal year exceeds the total amount needed for that fiscal year's costs and costs for the subsequent 2 fiscal years as described in paragraph 2g(1) of this enclosure. Reasonable controls over trademark licensing program expenses shall be implemented.

(3) Licensing fees not used for costs described in paragraph 2g(1) of this enclosure shall be transferred to an OSD or DoD Component MWR activity in accordance with Volume 12, chapter 31 of Reference (e) and Reference (f) before the end of the fiscal year that is 2 years after the fiscal year in which the fees were collected.

h. Requests and approvals for use of trademark licensing fees.

(1) Requests for use of funds deposited in a Component's Budget Clearing (Suspense) Account for Trademark Licensing shall be initiated by the program manager or by such other individuals or offices designated the authority to do so by the Component concerned in accordance with Reference (f).

(2) The individual or office designated in accordance with Volume 12, chapter 31 of Reference (e) to review and approve requests for the use of funds deposited in the Component's Budget Clearing (Suspense) Account for Trademark Licensing shall ensure that funds are only used for authorized purposes in accordance with paragraph 2g and its subparagraphs of this enclosure.

(3) Approved requests shall be submitted to DFAS according the procedures prescribed in Reference (f).

i. The provisions of paragraphs 2f through 2h of this enclosure requiring use of Component Budget Clearing (Suspense) Accounts for deposit of trademark licensing program receipts do not apply to trademark licensing program activities of Nonappropriated Fund Instrumentalities (NAFI) undertaken under authority of section 2260 of Reference (b). Components may authorize NAIs to retain trademark licensing fee receipts in organizational NAFI fund accounts when generated from the licensing of marks that the NAFI creates and/or are controls. NAFI's shall use such fee receipts for licensing and MWR activity costs. Accounting for such fees shall be in accordance with Volume 13, chapter 1 of Reference (e) and DoDI 1015.15 (Reference (1)).

j. OSD and DoD Components may authorize their licensees to identify themselves as “Official Licensees” of the DoD Component concerned. Licensees who identify themselves as such in printed form, including on product packaging, promotional materials and web sites, shall display prominently a non-endorsement disclaimer such as, “Endorsement by the United States Department of Defense or [the DoD Component Concerned] is not intended nor implied.” Licensees may not state they are a partner, or imply any further association, with DoD or the DoD Component concerned as a result of the license agreement.

k. OSD and DoD Components may establish web pages that list their authorized licensees. Names of authorized licensees with hyperlinks to the licensees’ web sites may be displayed provided the web page on which the names are displayed is clearly identified as being a listing of authorized licensees, and is done in such a manner that no licensee is given prominence over another. In no case may a Component endorse or in any way indicate that the products or services of one licensee are superior to the products or services of any other entity. Components establishing such a web page must prominently display an external links disclaimer compliant with DoDI 8170.01 (Reference (1)), such as shown at Figure 1.

Figure 1. Webpage Disclaimer

The appearance of external hyperlinks does not constitute endorsement by the United States Department of Defense of linked web sites or the information, products, or services contained therein. For other than authorized activities such as military exchanges and morale, welfare and recreation sites, the United States Department of Defense does not exercise any editorial control over the information you may find at these locations. All links are provided consistent with the mission of this web site.

l. All authorizations for the use of a DoD mark shall be made in the form of a license, regardless of whether fees are received or not. All such licenses shall:

- (1) Identify in detail the marks the licensee is authorized to use.
- (2) Provide quality control guidelines for the licensee’s items bearing the marks.
- (3) Describe the manner in which the marks may be reproduced and used.
- (4) Specify the term or duration of such authorization.
- (5) Be executed in coordination with the Component’s servicing legal counsel.

m. Licenses may include terms that require licensees (including license applicants) to submit product samples to an OSD or DoD Component trademark licensing program to facilitate quality control monitoring of items bearing marks owned or controlled by the Component. When requiring such product samples, Components shall inform licensees in writing that samples will not be returned unless their return is requested prior to delivery; that the licensee bears all costs

for delivery and return of samples; and that the U.S. Government disclaims all responsibility for the damage or loss of samples requested for return. Disposition of unreturned samples no longer needed by the Component for official use shall be in accordance with DoD Manual 4160.21 (Reference (m)).

n. OSD and DoD Components shall not receive in-kind goods or services as consideration for issuing a license to use marks owned or controlled by the Component. Requests for exceptions to this policy may be approved by the Manager, DoD Branding and Trademark Licensing Program, in coordination with the Component's servicing legal counsel when doing so is in the best interest of the DoD.

o. OSD and DoD Components shall not issue licenses that grant to a licensee the exclusive use of marks owned or controlled by the Component. Exceptions to this policy may be approved by the Manager, DoD Branding and Trademark Licensing Program, in coordination with the Component's servicing legal counsel when doing so is in the best interest of the DoD.

p. OSD and DoD Components shall not issue licenses in a manner that constitutes preferential treatment or selective benefit of the licensee.

q. Notifications, including cease and desist letters sent by an OSD or DoD Component regarding the unauthorized use of a DoD mark, shall be coordinated with the Component's servicing legal counsel. OSD Components shall report such notifications to the Manager, DoD Branding and Trademark Licensing Program.

3. GOVERNANCE OF OSD COMPONENT MARKS

a. The seal of the Department of Defense is reserved for official use only, pursuant to section 112 of Reference (b) and DoDD 5110.04 (Reference (n)).

b. Within 60 days of the publication of this instruction, OSD Components shall create a roster of official marks currently owned or controlled by the Component using the template in the appendix to this enclosure. Rosters shall be forwarded to the Manager, DoD Branding and Trademark Licensing Program, and will be compiled into a master roster of OSD Component marks. OSD Components shall maintain the currency of rosters and shall forward updated rosters to the Manager, DoD Branding and Trademark Licensing Program, as marks are established or disestablished for use within the Component.

c. The OSD Component Trademark Council shall be chaired by the Manager, DoD Branding and Trademark Licensing Program, and shall in addition consist of a representative from:

(1) DoD OGC, who shall be the functional expert on all legal matters related to the operation of OSD Component trademark licensing programs; protection of OSD marks from unauthorized use; and registration of OSD marks with the USPTO.

(2) Office of the Under Secretary of Defense (Comptroller), who shall be the functional expert on all finance matters related to the operation of OSD Component trademark licensing programs.

(3) Office of the Administrative Assistant to the Secretary of the Army, The Institute of Heraldry, who shall advise the Council Chair and OSD Components on matters of heraldry and the heraldic implications of existing and proposed design marks used within OSD.

(4) WHS OGC, who shall advise the Council Chair and OSD Components on all matters regarding use of the seal of the DoD.

(5) WHS Graphics and Presentations Division, who shall advise the Council Chair and OSD Components on matters related to the creation of design marks for use within OSD.

d. The purpose of the OSD Component Trademark Council is to provide subject matter expertise and program guidance to the OSD Components; upon request, assist the OSD Components with USPTO registrations; steer the overall governance of marks owned or controlled by OSD Components; and exercise primary governance of OSD marks not owned or controlled by a single OSD Component. The Council shall meet quarterly, at minimum.

e. In accordance with Reference (a) and this instruction, OSD Components are encouraged to register marks under their control with the USPTO that they deem to have a commercial value or when they determine the registration of marks is appropriate to address unauthorized use or infringement. The OSD Component Trademark Council shall assist OSD Components with USPTO registrations upon request. The process for requesting such assistance requires that:

(1) The program manager, individual, or office authorized by the Component head to manage the mark shall submit a request for trademark registration review to the Manager, DoD Branding and Trademark Licensing Program. The request shall include a copy and/or textual description of the mark; the proposed classification of goods and services in which the mark will be registered; and justification supporting trademark registration.



(2) The OSD Component Trademark Council will conduct the trademark registration review no later than at its next scheduled meeting. Following review, the OSD Component Trademark Council will provide recommendations and guidance to the requesting Component regarding issues such as the design of the mark; appropriate goods and services classifications for trademark registration; procedures for protecting registered marks from unauthorized use; and as appropriate, procedures for licensing the mark and managing any licensing fees received.

(3) The DoD OGC will coordinate with the requesting OSD Component, as appropriate, to identify an attorney of record to support the preparation, filing, and prosecution of a trademark registration. The requesting Component shall generally be responsible for funding registration fees and other costs associated with the initial registration and subsequent renewals of the registration.

APPENDIX TO ENCLOSURE 2TEMPLATE FOR OSD COMPONENT MARK ROSTER

OSD Components shall use the template depicted in Figure 2 when submitting a roster of marks. An electronic version of the template is available upon request from the Manager, DoD Branding and Trademark Licensing Program, Office of the Assistant to the Secretary of Defense for Public Affairs (OATSD(PA)).

Figure 2. Template for OSD Component Mark Roster

OSD COMPONENT MARK ROSTER				
Component: Defense Advanced Research Projects Agency				
Governance Point of Contact				
Name: Mr. John Theory				
Office: DARPA Public Affairs				
Telephone: (703) 555-1212				
Email: john.theory@darpa.mil				
Mark	*	Description (optional)	TM Status/ Number	TM Atty. of Record
	Y	DARPA's primary logo. Consists of a blue globe-like shape outlined in gray with six curved horizontal lines; a half-circle at the top and bottom of the globe-like shape; a straight line in the center of the globe-like shape, with a curved vertical line above and below the straight line; all gray in color. The letters "DARPA" appear in the front of the lines within the globe-like shape. The top of the letters are light silver turning to a darker gray toward the bottom of the letters.	Active 352255	Ms. Jane Law DARPA/GC jane.law@darpa.mil
	N	A stylized image of an atom consisting of three light green ovals and three dark green circles representing the orbits of three electrons.	Not Registered	N/A
DARPA TECH	N	Word mark only, no design.	Pending	Ms. Jane Law DARPA/GC jane.law@darpa.mil
* If mark is used in a trademark licensing program, or if Component approves non-DoD use, indicate "Y" If mark is reserved exclusively for official use by DoD, and external uses are not approved, indicate "N"				
Submit rosters to OATSD(PA) at: PAreview@osd.mil				

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

ATSD(PA)	Assistant to the Secretary of Defense for Public Affairs
DFAS	Defense Accounting and Finance Service
DoDD	DoD directive
DoDI	DoD instruction
GC DoD	General Counsel of the Department of Defense
MWR	morale, welfare, and recreation
NAFI	Nonappropriated Fund Instrumentality
OATSD(PA)	Office of the Assistant to the Secretary of Defense for Public Affairs
OGC	Office of General Counsel
U.S.C	United States Code
USD(C)/CFO	Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense
USPTO	United States Patent and Trademark Office
WHS	Washington Headquarters Service

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purposes of this Instruction.

cost of securing trademark registration. This may, at the discretion of the DoD Component head concerned, include:

Fees paid to secure and maintain the registration of trademarks, service marks, certification marks, and collective marks with USPTO, the trademark office of any State or U.S. territory or foreign governmental entity, and the U.S. Customs and Border Protection Bureau.

Salaries and wages of civilian personnel providing the services described in the previous paragraph. This includes salaries; fringe benefits; leave and holiday factors, when applicable;

DoD-funded civilian retirement costs; health and life insurance; and civilian retirement costs not funded by DoD appropriations.

costs of operating the licensing program. This may, at the discretion of the DoD Component head concerned, include:

Salaries and wages of civilian personnel working on the DoD Component's trademark licensing program to include salaries; fringe benefits; leave and holiday factors, when applicable; DoD-funded civilian retirement costs; health and life insurance; and other civilian retirement costs not funded by DoD appropriations.

Contractor support and administration costs. Tradeshows and other promotion and marketing expenses are included in this definition to the extent their primary function is to enhance brand development and commercial value through increased public awareness of the marks. The cost of ensuring licensees adhere to product quality standards; the cost of enforcing exclusive rights against unauthorized use of marks by third parties; and similar costs; are other examples, not intended to be all inclusive, of contractor support and administration costs that may be included.

Travel and miscellaneous administrative support costs. Training costs are included in this definition to the extent that such training is required to ensure personnel working in a DoD Component's trademark licensing program are provided the necessary education and skills to efficiently operate the program in accordance with the goals and guidelines set forth in Reference (a) and this instruction.

license. A written document that authorizes or gives official permission to a person, group, or organization to use a mark owned by a DoD Component. Such documents shall, at a minimum, provide quality control guidelines, specify the marks the licensee is authorized to use, the manner in which the marks may be reproduced, and the term or duration of such authorization. When used as a verb it means the act of issuing such a written document to the person or organization who is receiving authorization to use a mark owned by a DoD Component.

licensee. Defined in Reference (a).

mark. Any trademark, service mark, certification mark, or collective mark as defined by section 1127 of Reference (c) that is owned or controlled by a DoD Component. This includes but is not limited to words, names, seals, emblems, symbols, slogans, designs, logos, heraldic images, military operation designations, medals, insignia, the names or likenesses of military weapon systems, and other visual or aural displays in use or intended to be used by a DoD Component. This also encompasses registered trademarks and common law trademarks.

MWR activity. An authorized activity of an MWR program as defined in DoDI 1015.10 (Reference (o)).

NAFI. Defined in Reference (i).

OSD Components. The DoD Working Capital Fund Activities, DoD Field Activities, DoD Agencies, and all other DoD Components, excluding the Military Departments.

OSD Component mark. A mark that is owned or controlled by an OSD Component. It also includes marks such as names of military operations, words, names, slogans, designs, symbols, medals, insignia, and the names or likenesses of weapon systems that are used by multiple DoD Components.

program manager. The person designated as the director or head of a trademark licensing program operated by an OSD or DoD Component.

roster. A listing of all marks owned or controlled by an OSD Component.

trademark licensing program. Defined in Reference (a).