

Trademark Fair Usage Policy

This policy is designed to answer the most common questions we receive regarding use of On Top of the World Communities, LLC and its subsidiaries and affiliates trademarks (collectively "OTOW Marks"), to provide our community with clear guidance, and to enable others to make certain uses of the OTOW Marks without the need to seek our individual, written permission in each instance. Nothing in this Policy is intended to limit any right you may have to use OTOW's Marks in a manner that is otherwise allowed by law.

What are Trademarks?

Trademarks are best thought of as a type of consumer protection law: they help those seeking goods and services efficiently differentiate one supplier from another. From the United States Patent and Trademark Office, a trademark can be any word, phrase, symbol, design, or a combination of these things that identifies your goods or services. It is how customers recognize you in the marketplace and distinguish you from your competitors. Simply put a trademark:

- Identifies the source of your goods or services.
- Provides legal protection for your brand.
- Helps you guard against counterfeiting and fraud.

What are OTOW Trademarks?

The OTOW trademarks (collectively, the "OTOW Marks") are all trademarks owned or used by OTOW, including but not limited to:

1. **On Top of the World:** Real estate brokerage and management services in the field of condominium apartment developments. (Serial No. 73679752).



2. **On Top of the World:** Real estate brokerage and real estate management services; Providing indoor and outdoor recreational facilities. (Serial No. 86176252).



3. **On Top of the World:** telephone directories; construction planning, planning and laying out of residential communities, recreational parks and fishing piers; and real estate development; providing indoor and outdoor recreational facilities for health clubs, tennis courts, swimming pools, gymnasiums, auditoriums, pool rooms, shuffle board courts and golf courses. (Serial No. 74555301).



4. **On Top of the World News:** newspapers published from time to time. (Serial No. 74694763)



5. **OTOW:** Real estate brokerage and real estate management services; Construction planning, planning and laying out of residential communities; real estate development; Providing indoor and outdoor recreational facilities used for exercise and fitness, sports, games, musical and theatrical performances, art exhibits, cultural activities, and communal gatherings.



6. **On Top of the World Real Estate, Inc.:** Real estate services, namely, rental, brokerage, leasing and management of commercial property, offices and office space; Commercial and residential real estate agency services. (Serial No. 90386706).

**On Top of the World
Real Estate, Inc.**
Rentals™

7. **On Top of the World Real Estate of Marion, LLC:** Real estate brokerage of residential and commercial property. (Serial No. 90386745)

**On Top of the World
Real Estate of Marion, LLC**
Resales™

8. **On Top of the World Real Estate, Inc. Resales · Rentals · We Sell The World:** Real estate brokerage and leasing. (Serial No. 86354022).

**On Top of the World
Real Estate of Marion, LLC**
Resales • Rentals
We Sell the World™

9. **Colen Built Home Flex - How will you Flex?:** Custom construction of homes. (Serial No. 97068729)



10. **Colen Built Construction:** Residential building construction. (Serial No. 90372846)



11. Colen Built Development: Real estate marketing services, namely, on-line services featuring the promotion of residential new construction, which also contains back office solutions for builders. (Serial No. 90372786)



This list may be updated as other trademarks are created or registered.

When is the use of OTOW Marks permissible?

Use of the OTOW Marks is permissible if it qualifies as fair use. The fair use doctrine, consistent with the First Amendment, allows a person to use another's trademark either in its non-trademark, descriptive sense to describe the user's own products (classic, or descriptive, fair use) or in its trademark sense to refer to the trademark owner or its product (nominative fair use). Each of these uses are further discussed below.

Classic Fair Use

Classic (or descriptive) fair use is when someone uses a descriptive, geographically descriptive, or personal name designation in a trademark sense, but only to describe their own goods or services, or their geographic origin, or to name the person involved in running the business. For example, an advertisement for a hot-air balloon service using "on top of the world" to descriptively reference being on top of the world (being in the air), rather than referencing On Top of the World Communities would be a permissible fair use by the air balloon company.

Accordingly, users of the OTOW Marks should ensure their mark usage under this type of fair use is in accordance with honest commercial practices that do not suggest association with the trademark owner, do not confuse consumers about OTOW's goods or services, and that do not depreciate the value of the goodwill in the mark.

Nominative Fair Use

Nominative fair use permits use of another's trademark to refer to the trademark owner's goods and services associated with the mark. Nominative fair use

generally is permissible as long as: (1) the product or service in question is not readily identifiable without use of the trademark; (2) only so much of the mark as is reasonably necessary to identify the product or service is used; and (3) use of the mark does not suggest sponsorship or endorsement by the trademark owner.

For example, trademark law (including pursuant to the “nominative fair use” doctrine) allows you to make non-trademark use of the OTOW Marks to truthfully refer to or identify OTOW and its products and services. Nominative fair use generally applies to comparative advertising, parody, and non-commercial use of trademarks in academic articles, media reports, etc. A user does not need OTOW's permission to truthfully review our products and services or write about your experiences with OTOW. However, to the extent you perform a review or comparison, we ask that you verify any information provided to the general public regarding pricing, services, or products with OTOW prior to dissemination.

In Which Situations May I NOT Use the OTOW Marks?

In any situation not specifically listed above, and where you are not otherwise legally permitted to do so, you must ask us for permission before using the OTOW Marks. For example, you may not use our OTOW Marks in the following situations:

Uses that are Confusing, False, or Misleading

You may not use any OTOW Marks in a manner that is false or misleading, or in a manner likely to confuse consumers or the public about the source or origin of your products or services. Confusing uses include uses that may cause people to think your products or services are OTOW's products or services, or vice versa, or that may imply a formal affiliation between you and OTOW where none exists. E.g. In the production and use of an unauthorized sales video that uses any of the OTOW Marks, products, or gives the impression of being affiliated with the parent company, subsidiary, or affiliates. Unless we have done so in writing, OTOW has not officially sponsored or endorsed your product or service, and you should not imply that we have.

You may not use the OTOW Marks in, or as a part of, any trade name, trademark, domain name, or internet account name that is likely to cause confusion. So, the business name or trademark "On Top of the World Brokerage" or a Twitter handle like "@OTOW-Broker" are not permitted, because consumers who see those uses are likely to assume that they are official OTOW services or accounts, or to assume

that their owner is officially sponsored or endorsed by OTOW. By the same token, domain names would also be likely to cause confusion.

That said, the purpose of trademark law is to address confusion, and uses that misleadingly suggest affiliation where none exists: not to silence legitimate fair use of the trademarks.

Requesting Permission For A Use Not Allowed By This Policy?

If you wish to use any of the OTOW Marks in a manner that is not expressly permitted by this policy, or otherwise permitted by a trademark law exception such as fair use, please contact us directly at marketing@colenbuilt.net. We will consider your request and should respond within (30) days. For most efficient processing of your request, your email should:

1. provide plenty of detail regarding the requested use (e.g., "I'd like to advertise that I sell OTOW homes");
2. contain a mockup of the use you plan to make, so that we can review it (e.g., "enclosed is a .png, .jpeg, or pdf version of the design that I'd like to use");
3. be clear as to timing and when you require approval.

We ask that you submit any such requests to us at least thirty (30) days before you require approval.

If I Have Express, Written Permission to Use an OTOW Mark or have been granted a license, What Are the Usage Restrictions for That Trademark?

Use the Exact Mark. OTOW's trademarks should be used in their exact, most up-to-date form. They should neither be mis-abbreviated nor combined with other words.

Mark the Mark. The first or most prominent use of an OTOW Mark should be accompanied by a "tm" symbol ("™"), to indicate that it is a trademark; you may also use the "r in a circle" symbol ("®"), if the trademark in question is a registered trademark. If you aren't sure, using the "tm" symbol ("™") is fine. The first or most prominent mention of an OTOW Mark should also be set apart from surrounding text, either by capitalizing, italicizing, bolding, or underlining it.

Credit the Mark. The following notice text should appear somewhere nearby your first or most prominent mention of an OTOW Mark (for example in a footer or video description). If that's not practical, you may include it in a reasonable alternate location:

[mark] is a trademark of On Top of the World Communities.

Provide Disclaimer. The following type of notice text should appear either towards the beginning of any visual presentation (YouTube, Powerpoint ,etc.), prominently on any website, or be noticeable on any print or digital advertising materials.

- "On Top of the World is the registered trademark of On Top of the World Communities, Inc. [Your entity] is not associated with or sponsored by On Top of the World Communities, Inc.

Additionally, to the extent, you reference any of OTOW's amenities, services, prices, or other informational material; we request that you provide a link to the OTOW source material so consumers can ensure they have the most up to date information.

Questions?

If you'd like to use the OTOW Marks in a way that's not covered by this policy, or if you have any questions regarding this policy or the use of our trademarks overall, please contact us at marketing@colenbuilt.net. Please note that it may take up to thirty (30) for such requests to be processed.