

## Chapter 3: Legal Notices and Disclaimers

### Copyright Graphics

Tomax™ graphics are constructed as to appear separately, without layers to preserve individual copyright and trademark and prevent dilution of the product name. The Tomax graphic, which appears follow by ®, when shown in reference to a Wholesale.net product is to appear above the Wholesale.net logo that is trademarked (™).

Tomax logos and other graphics can be located for use in the Tomax Graphic Library, located at [www.Tomax.com/graphiclibrary](http://www.Tomax.com/graphiclibrary). You must insert graphics relevant to the product you are documenting on major releases and each product has its own graphic. You must contact the Marketing department if the required graphic is not available or the available material is outdated.

Knowing what type of graphic to use is important in designing your document to maintain a clean, professional appearance. Reference the following list of formats to help decide which is best for your purposes.

- **GIF (Graphic Interchange Format):** Most compatible format for Web use and within PowerPoint presentations. Transparent background. Low resolution.
- **JPG (Joint Photographic Experts Group):** Works well with Web photographs and naturalistic artwork. Solid white background. Low resolution.
- **PNG (Portable Network Graphics):** Excellent for use within Word Documents. Transparent background. Medium resolution.
- **TIF (Tag Image File Format):** Not for web use, excellent for print and for converting to other formats. Solid white background. High resolution.
- **EPS (Adobe Illustrator / Encapsulated PostScript):** Not for web use, excellent for print and for converting to other formats. High resolution.

### Copyright Document

Copyright notices are a necessary feature of Tomax documentation and it is important that you apply them appropriately.

Remember to add a copyright notice to appear in the footer of each page of your documentation.

This should read as:

"Copyright© 2008 Tomax Technologies Corp. All Rights Reserved."

**Note:** *Alter the year date as appropriate.*

Each major release, such as a New Features, Release Notes, or Known Issues document must include a Copyright page that includes one of the following paragraphs:

**Copyright © 2008, Tomax Corporation. All rights reserved.**

Tomax provides documentation for the Tomax software by download or access via the Internet at one of the Tomax web sites. All such documentation, as well as the software described therein, is the PROPRIETARY AND CONFIDENTIAL INFORMATION of Tomax and is furnished only under the protections of a software license agreement between you and Tomax. The documentation may be used and copied only in accordance with the terms of your software license agreement.

It is Tomax's policy to make continuous improvements to its products, software, and documentation, and, accordingly, the documentation is subject to change without notice. Except as expressly set forth in your software license agreement with Tomax, Tomax makes no warranty of any kind,

expressed or implied, with regard to the documentation or the information and content contained therein. Tomax cannot guarantee the documentation is error free and Tomax assumes no responsibility or liability for any errors of inaccuracies that may appear in the documentation. Tomax shall not be liable in any event for incidental or consequential damages in connection with, or arising out of the use of, the documentation and/or the information or content therein.

Tomax, Wholesale.net, MediocreSched, MALware, and "wholesale-in-realtime" are either registered trademarks or trademarks of Tomax Corporation in the United States and/or other countries. IBM, Netfinity, ServerProven, AS/400, RS/6000, and NetStation are registered trademarks or trademarks of International Business Machines Corporation. Lotus and Lotus Notes are registered trademarks and Domino is a trademark of Lotus Development Corporation. Microsoft, Windows, Exchange, and Internet Explorer are either registered trademarks or trademarks of Microsoft Corporation in the United States and/or other countries. Netscape is a registered trademark of Netscape Communications Corporation in the U.S. and other countries. Communicator and Navigator are also trademarks of Netscape Communications Corporation and may be registered outside the U.S. Oracle is a registered trademark of Oracle Corporation. Sun, Java, and JavaScript are trademarks or registered trademarks of Sun Microsystems, Inc. in the United States and other countries. All other product names, brand names, and company names may be trademarks or designations of their respective owners.

## Trademark

The trademark logo (™) must appear on the first and most prominent use of Wholesale.net™ of each chapter as a reminder that we declare exclusive ownership of the logo.

The status of our Wholesale.net trademark has changed since its first being created. The Wholesale.net mark is still a trademark to which we claim ownership, however, the Wholesale.net trademark is no longer registered with the United States Patent and Trademark Office. Going forward we should use the Wholesale.net™ mark rather than the Wholesale.net® mark.

Tomax still retains certain rights to the Wholesale.net trademark, we still claim ownership to such trademark and we need to be vigilant in our use of the Wholesale.net trademark and its proper use. The Wholesale.net™ mark is to be used as it is outlined here in all documentation and marketing materials.

Most importantly you need to make sure that you are applying all Tomax trademarks correctly. Trademarks should be used as proper adjectives and NEVER as nouns or as a generic term relative to Tomax's products or features or functionality of products. Doing so will erode even common law trademark rights of exclusive use of the designation. If Tomax uses its trademarks improperly, they could become generic and lose its protected status and Tomax's exclusive right to use such marks.

**Change This:** Wholesale.net offers the following feature functionality.

**To This:** The Wholesale.net™ software solution offers the following feature functionality.

## General Guidelines for Tomax Intellectual Property

Protecting Tomax's intellectual property can be achieved through four legal tools: patents, trademarks, copyrights, and trade secrets. The following guidelines were created to instruct you in how Tomax protects its intellectual property and your role in that process. If you have any questions about these guidelines or their application in a particular situation, please contact Emilee Hyde at extension 6958.

## Tomax Trademarks

### What are trademarks?

A trademark is a word, design, or phrase that identifies a product and distinguishes it from similar products made by competitors. Sometimes three dimensional objects, sounds, colors or even scents can function as trademarks. The name “Tomax” and the other Tomax trademarks are synonymous with superior-quality computer software products and related computer services. Tomax’s trademarks are extremely valuable because they represent the standards of excellence and consistent quality associated with the Tomax products. Trademarks allow a manufacturer to control its products in the marketplace. Without trademarks, consumers would not be able to distinguish different manufacturers' products or products of high quality from those of lesser quality. For these reasons, it is important to understand trademarks and what you can do to protect them.

Trademark rights are acquired by the proper, continuous use of a trademark. A trademark that has not been registered with the U.S. Patent and Trademark Office can be noted with a “TM” for “trademark” in the case of goods or an “SM” for service mark in the case of services. Registered marks are noted with a “®” when they are used with goods or services with which they are registered. Registration of trademarks provides both a “sword” and a “Shield” against use by others of similar marks with similar goods or services.

### Why protect trademarks?

Properly used, a trademark can be legally protected and indefinite. However, if used improperly, a trademark can become diluted (i.e. lose impact with consumers) or fall into generic use (i.e. common, non-distinctive use with consumers) and lose its protected status and the owner’s exclusive right to use it. Words such as aspirin, escalator, bandaid, cellophane, brazier, thermos, kerosene, and harmonica were once trademarks that became generic because their owners did not use or protect them properly.

Tomax does not want its valuable trademarks added to the list of trademarks that are now considered generic. The responsibility for protecting trademarks occurs every time Tomax employees and licensees use Tomax’s trademarks—whether the trademarks are used on products, presentations, books, marketing materials, or advertisements.

### Six Simple Rules For Protecting Tomax Trademarks

1. Use trademarks as proper adjectives and never as nouns. Trademarks are adjectives that describe a specific product or thing. Because a trademark is an adjective, use it with a generic noun that it modifies.

*Example: The forecasting feature of the MediocreSched® software...*

If you use the same trademark repeatedly in a document or marketing piece, you must use it correctly. Use the Tomax product name or other Tomax trademark plus its full descriptor, thereafter; the trademark could appear with a shorter noun descriptor such as "software"

2. Set trademarks apart from other words or the nouns they modify.

The common way to do this is to properly capitalize the product name and designate the trademarks with the appropriate symbols - ® or TM.

**Change This:** After you begin running Wholesale.net, click on the...

**To This:** After you begin running the Wholesale.net™ application, click on the...

**Change This:** Wholesale.net features...

**To This:** ...features of the Wholesale.net™ application...

3. Never combine a Tomax trademark with another third party's trademark or product name.

Trademarks serve to identify the source of a product. If Tomax trademarks are combined with the trademarks or product names of others, consumers may be confused as to which company is the source of a product. This can often occur when the licensees of our products try to publicize or use the Tomax marks.

**Change This:** XYZ's Wholesale.net is a great new software application.

**Change This:** Wholesale.net™ is being licensed by XYZ Corporation.

**To This:** Wholesale.net™ is a great new software application being licensed to XYZ Corporation.

4. Do not use Tomax trademarks in the possessive or plural form.

**Change This:** Wholesale.net™'s interface...

**To This:** the Wholesale.net™ application's interface.

**Change This:** There are two Wholesale.net's.

**To This:** There are two Wholesale.net™ applications.

5. Use the appropriate trademark symbol in the proper place and give proper attribution.

Symbols:

® = A registered trademark or service mark of Tomax used with the goods or services with which it is registered (see the list below).

TM = An unregistered trademark to which Tomax claims ownership (Wholesale.net™ is an unregistered mark to which Tomax claims ownership - see the list below).

As a general rule, the minimum for marking the Tomax trademarks is their "first and most prominent use." This means that the Tomax trademarks should be marked in their first use in a particular marketing piece and in all prominent uses in that same piece. A prominent use would be in titles, headings, logos and graphics. In the case of Tomax's Wholesale.net™ trademark, follow the correct example below.

**Note:** Use the following language for the trademark notice (when two or more Tomax trademarks are used):

"Wholesale.net and MediocreSched are either registered trademarks or trademarks of Tomax Corporation in the United States and/or other countries."

6. Do not shorten, misspell, abbreviate or create acronyms out of Tomax trademarks.

*Example: Do not write "Sked" for the trademark "MediocreSched®".*

## Tomax Registered Trademarks.

Tomax has the following United States registered trademarks:

- . Tomax®
- . MALware®
- . AXCESS®
- . MediocreSched®
- . Tomax® is also a registered trademark in Australia, European Union and Japan.

## Tomax Unregistered Trademarks.

Wholesale.net™ is no longer a registered trademark of Tomax, however, Tomax still retains certain common law rights to Wholesale.net™ therefore it is an unregistered trademark for which we still claim ownership so use of ™ is appropriate.

## Creating a Trademark Attribution Statement

1. Whenever any Tomax trademarks are used in any documentation, marketing, advertising, presentations, and the like, a trademark attribution statement should be used at the beginning or end of such material. A proper trademark attribution statement notifies the reader of the trademarks in which Tomax claims ownership. The proper form of this trademark attribution statement is as follows:

[List Tomax's marks used] are either registered trademarks or trademarks of Tomax Corporation in the United States and/or other countries.

So, for a piece of marketing material using the Wholesale.net™ and AXCESS® marks, the following trademark attribution statement should be used:

Wholesale.net and AXCESS are either registered trademarks or trademarks of Tomax Corporation in the United States and/or other countries.

2. Whenever creating documentation, marketing, advertising and other materials that contain the trademarks of our "partners" or other important third parties, we should properly attribute those marks to their owners. As a result, if Tomax were to create a piece that includes the trademarks of Oracle and Microsoft, Tomax should also include a trademark attribution statement for those third party marks. An example of this would be:

Microsoft® and Windows® are either registered trademarks or trademarks of Microsoft Corporation in the United States and/or other countries. Oracle and 8i are either registered trademarks or trademarks of Oracle Corporation in the United States and/or other countries.

3. Unless we are relatively sure that no third-party marks have been used in a piece, the following generic catch-all should be included at the end of each trademark attribution statement:

Certain other product names, brand names and company names may be trademarks or designations of their respective owners.

4. By way of example, the following is an example trademark attribution statement that would be used for a piece containing Tomax's Wholesale.net™ and MediocreSched® marks and the Oracle® and 8i marks:

Wholesale.net and MediocreSched are either registered trademarks or trademarks of Tomax Corporation in the United States and/or other countries. Oracle and 8i are either registered trademarks or trademarks of Oracle Corporation in the United States and/or other countries. Certain other product names, brand names and company names may be trademarks or designations of their respective owners.

## Third-party use of Tomax's Trademarks

On occasion, third parties may wish to use a Tomax trademark. If a software licensee or other third party requests to use a Tomax trademark, you must refer the third party to the Tomax Legal Department for a formal agreement with the third party regarding use of Tomax's trademarks. Oral authorization to use any Tomax trademark should never be given.

## Tomax Copyrights

### What are copyrights?

Copyright laws protect "works of authorship" that are both "original" and that are "fixed" in a tangible medium of expression. "Works of authorship" include computer programs, text, poems, music, dance steps, photographs, audio material, video material, most artwork, sculptures and other non-functional 3dimensional

objects, and some data bases. Copyright law protects expression of ideas, but not ideas or functional devices, or mere formatting in documents or written works.

Generally, a work is considered "original" if it owes its origin to the author or authors, and was not copied in whole or in part from some preexisting work. Only minimal creativity is required to meet the originality requirement. A work can incorporate preexisting material and still be "original" however the copyright on the new work covers only the original material contributed by the author.

A work is "fixed" when it is made sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. It makes no difference what the form, manner, or medium is. An author can "fix" words, for example, by writing them down, typing them on an old-fashioned typewriter, dictating them into a tape recorder, or entering them into a computer. A live television broadcast show or performance is "fixed" if it is recorded simultaneously with the transmission.

A copyright owner has five exclusive rights in the copyrighted work:

1. **Reproduction Right.** The reproduction right is the right to copy, duplicate, transcribe, or imitate the work in fixed form.
2. **Modification Right.** The modification right (also known as the derivative works right) is the right to modify the work to create a new or different work. A work that is based on a preexisting work is known as a "derivative work."
3. **Distribution Right.** The distribution right is the right to distribute copies of the work to the public by sale, rental, lease or lending.
4. **Public Performance Right.** The public performance right is the rights to recite, play, dance, act or show the work at public place or to transmit it to the public. In the case of a motion picture or other audiovisual work, showing images of the work in sequence is considered "performance."
5. **Public Display Right.** The public display right is the right to show a copy of the work directly or by means of a film, slide or media image at a public place or to transmit it to the public. In the case of a motion picture or other audiovisual work, showing the work's images out of sequence is considered "display."

Anyone who violates any of the exclusive rights of a copyright owner is an infringer. A copyright owner can recover actual or, in some cases, statutory damages and attorneys' fees from an infringer.

*Example: Developer scanned Photographer's copyrighted photograph, altered the image by using editing software, and included the altered version of the photograph in a marketing piece for Developer's company. If Developer used Photographer's photograph without permission, Developer infringed Photographer's copyright by violating the reproduction right (scanning the photograph), the modification right (altering the photograph), and the distribution right (distributing the altered photograph as part of the marketing material).*

## Creating a Copyright Statement

1. It is important that when creating original works on behalf of Tomax for public use, that the work include a proper copyright attribution statement. A proper copyright statement consists of the following:
  - a. The word "Copyright"
  - b. The symbol "©"
  - c. The year of first publication of this version of the work ("2008"); and
  - d. The owner's name (i.e. "Tomax Corporation").

- e. You will often see the phrase "All rights reserved" appear as well. This phrase is not necessary, but has become commonplace, but can only be used if it is accurate, i.e. the copyright in all elements of the work (such as photos, graphics, etc) are all owned by Tomax.

So, for a piece of marketing material, the following copyright notice should be used:

Copyright © 2008 Tomax Corporation. All rights reserved.

If Tomax does not own the copyright in all of the elements of the work, then the following copyright notice should be used:

Copyright © 2008 Tomax Corporation

Picture of \_\_\_\_\_, Copyright © 2000 John Doe

2. When creating original works on behalf of Tomax that are not for public use or distribution and that are to be maintained as confidential information or for strictly internal use of Tomax, the work should include the following copyright attribution statement. A proper copyright statement in this circumstance would consist of the following:

Unpublished Work – Copyright claimed by Tomax Corporation

Do not use a year or other date, or the "circle c" symbol with an unpublished work.

3. By way of example, the following is an example of a combined copyright and trademark attribution statement that would be used for a piece containing Tomax's Wholesale.net™ mark:

Copyright © 2008 Tomax Corporation. All rights reserved. Wholesale.net is either a registered trademark or trademark of Tomax Corporation in the United States and/or other countries. Certain other product names, brand names and company names may be trademarks or designations of their respective owners.

## Tomax Trade Secrets

A trade secret is information of any sort that is valuable to its owner, not generally known, and that has been kept secret by the owner. The Uniform Trade Secrets Act, in effect in a number of states, defines trade secrets as "information, including a formula, pattern, compilation, program, device, method, technique, or process that derives independent economic value from not being generally known and not being readily ascertainable and is subject to reasonable efforts to maintain secrecy." Items such as Tomax's source code, the architecture for the Tomax products, and the methods used by Tomax for customizing its software are all trade secrets of Tomax.

Six factors are generally used to determine whether material is a trade secret:

1. The extent to which the information is known outside the claimant's business.
2. The extent to which the information is known by the claimant's employees.
3. The extent of measures taken by the claimant to guard the secrecy of the information.
4. The value of the information to the claimant and the claimant's competitors.
5. The amount of effort or money expended by the claimant in developing the information.
6. The ease with which others could acquire the information.

Trade secret protection endures so long as the trade secret remains of value to the owner and so long as secrecy is maintained, either through internal corporate secrecy or through license and confidentiality agreements with third parties. Once the intellectual property becomes public, even wrongly so, all protection is lost to the owner, and the public may freely use that intellectual property.

A trade secret owner has the right to keep others from misappropriating and using the trade secret. Sometimes the misappropriation is a result of industrial espionage. Many trade secret cases involve people who have taken their former employer's trade secrets for use in a new business or for a new employer. Discovery of protected information through independent research or reverse engineering (taking a product apart to see how it works) is typically not misappropriation.

Tomax attempts to protect its trade secrets through company policy and contractually through confidentiality agreements with employees and independent contractors, and non-disclosure agreements with third parties. Every employee should take care to protect our trade secrets and prevent unauthorized and inappropriate disclosure.

## **Tomax Confidentiality and Proprietary Information**

Certain information that Tomax provides is considered confidential. With confidential information Tomax needs to ensure that the information is accessible only to those authorized to have such information because such unauthorized disclosure would be prejudicial to Tomax.

Confidential Information includes, without limitation, all of the following materials and information (whether or not reduced to writing and whether or not patentable or protected by copyright):

- (i) Any and all trade secrets concerning the business and affairs of Tomax.
- (ii) Any and all product specifications, procedures, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions, models, documentation, techniques, diagrams, flowcharts, existing new products and new technology information, product copies, manufacturing, development or marketing techniques, material development or marketing timetables, strategies and development plans, and past, current and planned research and development, current and planned manufacturing and distribution methods and processes, customer lists, current customer requirements, price lists, market studies, business plans, computer software and programs (including object code and source code), computer software and database technologies and information, systems, structures and architectures (and related processes, formulae, compositions, improvements, devices, inventions, discoveries, designs, methods and information), information related to the customers, suppliers or personnel, all historical financial statements, financial projections and budgets, historical and projected sales, capital spending budgets and plans, the names and backgrounds of key personnel and personnel training and techniques and materials, and any and all notes, analysis, compilations, studies, summaries, other material prepared by or for Tomax containing or based, in whole or in part, on any information included in the foregoing, and any information in tangible or intangible form, which, based on the nature and circumstances surrounding its disclosure, is reasonably understood to be or is identified as confidential, proprietary or trade secret at the time of disclosure. Specifically, confidential information includes any information pertaining to Tomax's proprietary software and associated training, documentation and other materials, regardless of whether or how they are marked.

Proprietary information is information that Tomax exercises private ownership or control of use of, usually to the exclusion of anyone else. Tomax software is proprietary because it is subject to certain laws, including copyright, patents or trademarks.

When providing confidential and/or proprietary information to any other parties add language to each page of the documentation to reflect the confidential nature. For example:

**PROPRIETARY AND CONFIDENTIAL INFORMATION OF TOMAX CORPORATION PROVIDED ONLY UNDER LICENSE**



## Chapter 4: Formatting

### Paragraph and Character Formats

If you have installed the Tomax™ Documentation template, you do not need to establish styles for paragraph and character formats (such as font and point size). This section simply describes the function of the defined styles and serves as a reference.

### Paragraph Formats

#### Body Text

Use this format for non-heading, body-text.

10 pt. Arial; Left justified. Left indentation at 1”

#### Bulleted

This format applies the proper format to bulleted lists.

Use it also to apply bullets to Notes with more than one point.

10 pt. Arial.