

# interactive dialogue

The "Protecting Your Brands in Food, Beverage and Agriculture" webinar will begin at 10:00 am CT

To listen to the audio portion of the webinar, please dial 1-800-536-9136, access code: 9038709#.

 A sign-in sheet and materials were attached to the program reminder email sent Monday, June 5.

- To submit a question before or during the webinar, please use the chat pane on the lefthand side of your screen.
- A replay of this webinar will be available upon request.



# interactive dialogue

# **Protecting Your Brands in Food, Beverage and Agriculture**

Jeffrey Cadwell
Mike Droke

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#### a brave new format

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#### What is a Brand?

A brand—otherwise known as a trademark—is an identifier of source that can take many forms, including:

- **Brand Name CARGILL**
- Slogan M'M! M'M! GOOD!
- **Logos or Designs**



- Trade Dress (product packaging or design)
- Colors Green & Yellow (as applied to machines)



- **Sounds Pillsbury Doughboy Giggle**
- Smells Perfume Scent





## **Trademark Rights Are Geographic**

- State
- U.S. Federal
- International



## Selecting a Trademark

#### **Spectrum of Distinctiveness**



- Fanciful XEROX
- Arbitrary APPLE (for computers or records)
- Suggestive SNO-RAKE
- Descriptive BED & BREAKFAST REGISTRY (for reservation services)
- Generic BINOCULARS



## **Selecting a Strong Mark**

- Marks should be distinctive (fanciful, arbitrary, or suggestive)
- Watch foreign translations (e.g., NOVA = "no go" in Spanish)
- Avoid marks similar to those used by competitors



## **Development of New Brands: Step 1**

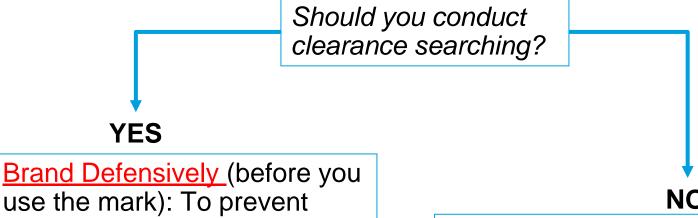
Are you creating a product descriptor or brand?

Product Descriptor: You want the mark to become a term in common language and are using it for its dictionary definition or descriptive meaning: "Aspirin is a great pain reliever."

Brand: You always want the mark to indicate the <u>source</u> of the products or services you are offering: "The Outdoor Store's Trailblazer<sup>TM</sup> tent is designed for outdoor family fun and adventure, while comfortably sleeping six people."



## **Development of New Brands: Step 2**



Brand Offensively: To gain rights.

Unsure if mark is a brand or product descriptor

Product Descriptor: There is no use in searching a term that is only going to be used in a descriptive manner.



infringement.

## **Development of New Brands: Step 3**

- Consider filing for a trademark registration if:
  - The mark will be used as a brand and not a product descriptor
  - The mark will be used for a core product or service
  - The mark will be used on a product or service that will be offered for several years
  - You will spend significant amounts of money developing the brand and advertising the product or service.



#### **Benefits of Federal Trademark Registration**

- Entitled to use ®
- Notice to 3rd parties
- Nationwide protection
- Litigation advantages
- Priority filing with foreign applications
- Exclude infringing imports
- Increased value of business



## **Proper Marking and Use**

- Marking
  - Notice to others
  - Unregistered marks: Use TM or SM
  - Registered marks: Use ®
- Rules for proper use of a trademark
  - Use as adjectives and not in a possessive form, or as nouns or verbs.
    - Yes: We sell ROLLERBLADE in-line skates.
    - No: We sell Rollerblades.
    - No: Get out and go rollerblading.



## Infringement

#### How to avoid becoming an IP defendant:

- Don't use the marks of others without permission
- Don't adopt similar product designs
- Clear marks <u>before</u> adopting

#### Risks:

- Refusals by PTO
- Oppositions
- Lawsuits
- Injunction, damages, loss of profits, attorneys' fees, corrective advertising



#### **Trademark Enforcement**

#### Ways to Identify Infringement

- Watch services (trademark, domain name, and common law)
- Monitor trade shows and magazines
- Customers and employees
- Track competitors and vendors
- Internet searches (Google, Yahoo!, etc.)
- Reporting incidents of confusion
- Watch for misuse of your marks by others



# who wants more credit? CLE credit, that is

Complete the sign in sheet included in the reminder email (sent yesterday) and return to <a href="mailto:hubble.michelle@dorsey.com">hubble.michelle@dorsey.com</a>.

We will send CLE Certificates to those who return the form.



#### how do I learn more?

## interactive dialogue

The next webinar will focus on 
"Protecting Your Business Interests During 
Employee Departures"

Please look for an invitation with additional details and plan to join us.



### questions?



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