

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 left-hand side of your screen.
- A replay of this webinar will be available upon request.



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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
- Combinations –



Trademark Rights Are Geographic

- **State**
- **U.S. Federal**
- **International**

Selecting a Trademark

Spectrum of Distinctiveness

Generic
Weak



Fanciful
Strong

- 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 source of the products or services you are offering: *“The Outdoor Store’s Trailblazer™ tent is designed for outdoor family fun and adventure, while comfortably sleeping six people.”*

Development of New Brands: Step 2

Should you conduct clearance searching?

YES

Brand Defensively (before you use the mark): To prevent infringement.

Brand Offensively: To gain rights.

Unsure if mark is a brand or product descriptor

NO

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

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 before 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 hubble.michelle@dorsey.com.

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

how do I learn more?

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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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