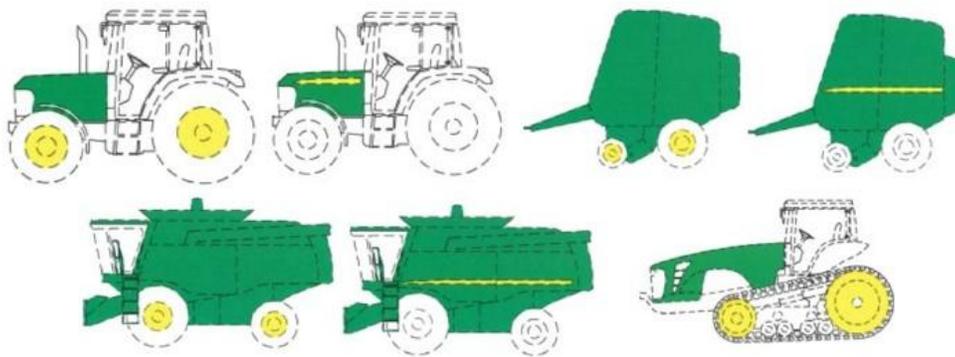


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[Color Marks & One Company's Long Haul to Color Mark Protection](#)

Posted on October 27, 2010 by [Susan Perera](#)



I was surprised to see the six registrations pictured above for color marks come out of the USPTO this month. And I bet that most of you can identify the owner of these marks without even checking the registrations. (If you must, registrations: [here](#), [here](#), [here](#), [here](#), [here](#), [here](#), and [here](#).)

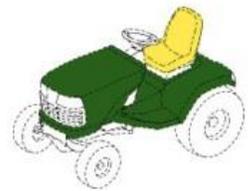
Although I wouldn't consider my childhood one of rural Minnesota, I have still been aware of, and associated, the distinctive green and yellow colors on lawn and tractor equipment with John Deere for as long as I can remember. In fact, I would consider John Deere's use of color as distinctive as any of the textbook examples (e.g. UPS brown or Owens-Corning pink). Thus, I was quite surprised to see Deere has just now received trademark registrations for some of these color marks.

A little research shows that even the most respected name in lawn and tractor equipment can face an uphill battle to protect its brand. Deere has spent almost 3 decades parsing out the law of color marks and achieving federal registrations for its equipment bearing "John Deere Green" and "John Deere Agricultural Yellow."

A short summary of Deere color mark history:



- June 1982 – Deere sought to stop a competitor from using green and yellow on tractor attachments by way of an unfair competition claim. The court held that green and yellow were aesthetically functional and barred any relief.
- March 1982 – Deere filed an application for a horizontal yellow stripe on a green machine hood or panel. Reg. No. [1,254,339](#)
- December 1985 – Deere filed an application for a green vehicle body or frame with yellow wheels. Reg. No. [1,502,103](#)
- December 1985 – Deere filed an application for the colors bright green and bright yellow in connection with wheeled agricultural lawn and garden machines. Reg. No. [1,503,576](#)
- March 1988 – Trademark Trial & Appeal Board grants registration for 1985 marks originally refused registration based on aesthetic functionality of marks.
- February 2004 – Deere sought to stop competition for making yard and garden equipment also bearing green and yellow colors. The court held that Deere could not inhibit the competitor from using the colors green and yellow in the abstract.
- February 2005 - Deere filed an application for agricultural and lawn tractors consisting of a green vehicle and a yellow seat. Reg. No. [3,132,124](#)
- 2010 – Deere filed applications for more than a dozen color claims in connection with a variety of machines.



After the jump a discussion of color trademarks and Deere’s role in the history of trademark color law.

Decisions from Deere’s avid pursuit of color trademark protection have provided much to the trademark law landscape in the area of color marks.

Even before it was clearly decided whether a color could serve as a trademark Deere was attempting to protect its green and yellow colors through the laws of unfair competition.

In 1982, Deere brought suit against Farmhand, a maker of tractor attachment equipment, for copying the “John Deere Green” color. Farmhand argued that consumers wanted their tractor attachments to match their tractor color; thus competitors should be allowed to continue using the "John Deere Green" color. Even with a finding that Farmhand had copied the “John Deere Green” color, a public opinion survey holding that 45% of the public believed Farmhand was marketing its product in conjunction with John Deere, and evidence that 80% of those surveyed identified “John Deere Green” as associated with Deere & Company, the court held that because consumers wanted their attachments to aesthetically match their John Deere tractors the use of the color green on tractor accessories was functional. Therefore, Deere was barred from any relief. (Reminder: previous functional color discussion by Steve – [here](#)).

Apparently undeterred, Deere sought color trademark protection in 1982 and 1985. The Examiner refused the 1985 applications based on aesthetic functionality. On appeal to the Trademark Trial & Appeal Board in 1988, the Board held that that functionality is a utilitarian feature and that in this case making a product more attractive is not functional. Therefore, Deere’s applications were allowed.



It wasn't until 1995 that the Supreme Court finally held that a single color could be protected as a trademark. The Court rejected the previously made argument that allowing single colors to serve as marks would allow a "color monopoly" in a field of goods or services and thus should not be allowed.

A later court in 2004 held that Deere could not assert trademark rights in every abstract combination of the colors green and yellow for lawn and tractor equipment. Yet, Deere could assert rights in specific combinations of the colors as applied to specific parts of equipment. Following this decision, Deere has registered a wide array of marks in connection with specific machines.

Color marks can play an important role in distinguishing products in the market. Do you think we would associate these colors with Deere if it hadn't been so persistent?

