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UNDERSTANDING TRADE DRESS

Businesses work hard to develop the visual appearance of their products so that the product is easily recognizable and associated with the good will of the product and company. Visual appearance, like written words or recipes, is an important part of a company's intellectual property. The appearance of a product, building or anything else associated with the business is known as its trade dress.

What is Trade Dress?

Trade dress is anything that a consumer looks at and identifies with a specific product or company. A trade dress must be distinctive for reasons that are not purely functional. The appearance of the product or location must have secondary meaning – people must be able to look at it and be able to instantly identify it based on its design. Trade dress could be the packaging of a product, the manner in which goods are displayed in a retail store, the appearance of a chain of restaurants, or the specific layout of a company's written materials such as a book jacket or magazine cover. Some Courts have allowed trade dress protection for websites, although the exact protections available for websites and how trade dress is defined with regard to websites is an area of law that is still very much evolving in the United States.

How to Protect Trade Dress

Trade dress is protected by the federal Lanham Act. The Lanham Act allows a company to sue if it believes that another company has used its trade dress in a way that is likely to cause confusion among consumers or is intended to deceive consumers as to the origin, nature or approval of the product.

For example, Company B should not be able to make money by fooling people into believing that their product was made by Company A. If Company B does use Company A's trade dress for that purpose and profits from it, or causes Company A damages because people believe that Company B's inferior product was made by Company A, then Company A may be entitled to damages in a civil lawsuit. Courts will consider the similarity in products, evidence of actual confusion, the strength of the trade dress, the degree of care exercised by both parties and how both products are used when deciding if Company B improperly used Company A's trade dress.

It is not necessary for a company to protect its trade dress by registering it with the U.S. Patent and Trademark Office (USPTO). A company can collect damages even if the trade dress has not been registered. However, companies do have the option of registering their trade dress with the USPTO. Registration provides certain benefits. It puts other businesses on notice that a company is actively protecting its intellectual property and it can create certain legal presumptions that make any litigation about violation of a trade dress easier to win.

Trade dress is important to the profitability of a business and it is protected under the law, as are other forms of intellectual property. If you have any concerns that your trade dress may have

been violated then it is important to seek the advice of an attorney as soon as possible to protect your rights.

You can visit our Test Your Trademark page: www.lanternlegal.com/test_trademark.php and activate our **Brand Meter™** feature.

You may also learn more about our trademark and other service on our website: www.LanternLegal.com

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