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## [Snickers Cross-Section Trademark Notice](#)

Posted on October 11, 2010 by [Steve Baird](#)



You may recall about a year ago I did a post entitled "[Delicious Trademarks: Candy Bar Cross-Section Trademarks?](#)" I was reminded of this a couple of weeks ago when I snapped this photo, capturing what I believe to be the same point of sale display that inspired my original post:

A couple of months ago I saw in a convenience store a large Snickers point-of-sale floor-display depicting a prominent and attention-getting cross-section of a Snickers candy bar. Given Mars' apparent interest in [owning](#) and creating non-traditional trademark rights [surrounding](#) the Snickers brand (revisit [Dan's post from earlier this year](#)), it made me wonder whether Mars might view (and want consumers to view) the cross-section of the famous Snickers candy bar as a trademark too. After all, trademarks are one form of intellectual property that can last forever, so long as they continue to be used in commerce. In case you're wondering, I couldn't find any indication that Mars has sought to register any candy bar cross-sections as trademarks.



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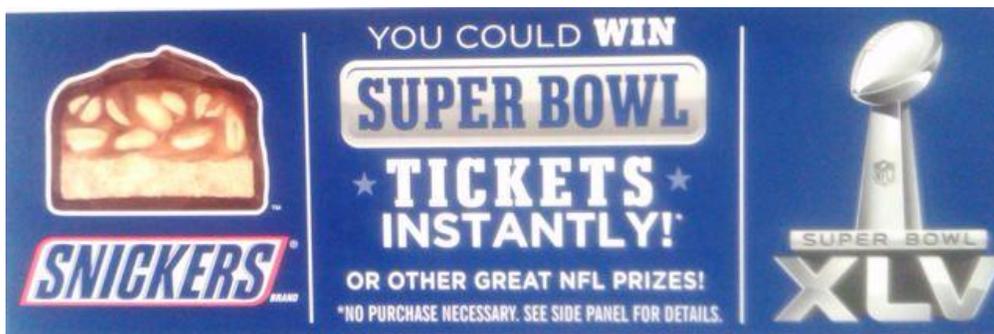
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Now, keeping in mind, to be a non-traditional trademark, the symbol or device must (a) *identify* the goods, (b) *distinguish* the goods from those of others, and (c) *indicate the source* of the goods, there appears to be (at least) some potential for treating candy bar cross-sections as trademarks, provided the cross-sections actually are used as trademarks in commerce. In other words, it's not enough that the bars could be sliced to view their otherwise purely internal cross-sections; depictions of the cross-sections would have to appear on packaging or at least point-of-sale materials (advertising alone won't cut it).

So, to satisfy a court's hunger for the "use in commerce" requirement, and if depicting the candy bar cross-section on packaging leads to a creative buzz-kill, then a prominent cross-section on point-of-sale displays should suffice. Having said that, given the non-traditional nature of a cross-sectional trademark, perhaps some "look-for" advertising might be just what the candy man ordered to help create the cross-section as a delicious new non-traditional trademark. The Candyblog certainly enjoys showing cross-sections of candy bars in discussing the pros and cons of the various goodies they review.

In case you're wondering, I still see no sign that Mars is seeking federal trademark registration of any candy bar cross-section, but just days ago, in a different convenience store, I snapped yet another image of a more recent Snickers point of sale display, this one co-branding with the NFL's [Super Bowl XLV, to be played February 6, 2011, in Cowboys Stadium, located in Arlington, Texas.](#)

Still no trademark application (at least, yet), but this more recent point of sale display actually shows a TM notice positioned next to the cross-section image, indicating Mars does, in fact, view the cross-section as a trademark, see the image below the jump, if you don't believe me.



So, what do you think, does this two-dimensional cross-section image function as a non-traditional trademark for Snickers candy bars?

If so, what might the scope of rights include? Would the rights be limited to two-dimensional images of confusingly similar cross-sections? Or, might the rights also extend to candy bars that actually depict a confusingly similar cross-section when sliced and/or diced?

Last, will Mars seek federal registration or follow [Seth Godin's advice to Just TM It?](#)

