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Seeing Green

October 12, 2011 by [Susan Perera](#)



Store shelves continue to turn green as an increasing number of products tout their sustainable nature through the use of green product packaging. The most recent issue of the ABA magazine, [Landslide](#), is all about “green” with multiple articles discussing the impact of this phenomenon in the IP field.

One of the articles, “It’s Not Easy Being Green: Use of the Terms “Organic,” “Sustainable,” and “Natural” in Trademarks and Advertising” written by Jennifer M Hetu and Anessa Owen Kramer, discusses the surge of trademark applications for marks containing “organic,” “sustainable” and the like. They outline the USPTO’s treatment of these marks which could include a possible disclaimer requirement or a refusal if the use of these terms would be deemed false or deceptive.

Others are also carefully watching the green phenomenon at the USPTO, including Michael E. Tschupp, who provides weekly updates on his blog, [Sustainable Marks](#), identifying the number of green marks approved for publication and registered each week. (Averaging 30-40 new marks a week!)

All of this leads me to wonder on the protectability of a mark containing the term or color green. When you see a “green” trademark or package do you automatically assume the product is good for the environment? Are you skeptical about these claims?

More on the protectability of colors, in an upcoming post.

