

A Refresher on the Importance of Trademarks and Trade Dress in the Food and Beverage Industry

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The quality, taste, and appearance of food and beverage products are important, but there are other aspects of those products that also contribute to, and even sustain, their commercial success. In particular, the intellectual property behind a food or beverage product can be a significant factor in that product's success. And intellectual property protections are significant in nearly all economic environments because they serve as a means for protecting and furthering the image associated with a product.

In the United States, there are many types of intellectual property protections that may be available to food and beverage product manufacturers. For example, a particular manufacturing process may be covered by utility patents. Design patents, by contrast, may protect the ornamental design of a package, such as the distinctive shape of a bottle. Relatedly, copyrights may be available for some aspects of product packaging and advertising, such as text and artwork. And the specific recipe for a food product or a beverage may be subject to certain protections as a trade secret.

Trademarks and trade dress protections are also likely available for at least some part of a product's package or even the configuration of a product, such as a candy formed into a particular ornamental shape. Those protections are crucial. In fact, the benefits afforded by trademark and trade dress law often serve as the centerpiece of intellectual property protection for a food or beverage product in the United States.

Trademarks and Trade Dress Are Branding Tools

Generally speaking, a trademark is something—such as a word, name, symbol, or logo—that (1) identifies or distinguishes one company's goods from those manufactured or sold by others and (2) indicates the source of the goods. Relatedly, trade dress, which can often be registered as a trademark, typically refers to the total image or appearance of a product and may include a product's size, shape, color, and texture.

Trademark and trade dress represent the brand identity of a product, and in fact, a trademark is often synonymous with the brand itself. A customer will likely rely upon packaging as an identifier of goods and for the information it conveys when evaluating whether to purchase a product. Therefore, there is a strong incentive to ensure that this packaging has adequate trademark and trade dress protection. Relatedly, the packaging should be designed in a manner that does not infringe upon the trade dress and trademarks of others. In addition to facing the risk

that the product is mistakenly associated with another company or brand, there is also the risk that another party will attempt to enforce its intellectual property rights and prevent the product from achieving long-term success.

Trademarks and Trade Dress Protect Investment in Brands

It is extremely important for both well-established players and newcomers to the food and beverage industry to protect their brands. Among other things, a manufacturer will want to distinguish its products from others in the marketplace, prevent competitors from unfairly trading on or benefiting from its reputation, and maintain the image associated with its product, including taste and quality standards. These objectives can be accomplished through the enforcement of trademark and trade dress rights. In fact, a food and beverage manufacturer can rely upon those rights to control the image of its product's brand and distance its brand from unwanted or unintended associations.

For example, a candy manufacturer recently relied on both its trademarks and trade dress as part of an attempt to prevent unauthorized parties from advertising e-cigarette products while referencing and displaying names, overall appearances, and packaging associated with the manufacturer's candies. Similarly, a manufacturer of pancake mix relied upon the trade dress associated with its packaging to prevent a competitor from selling its mix in a box with a similar overall appearance. And a manufacturer of fruit juice drinks, which claimed that hundreds of millions of dollars were spent promoting and selling its product in a "pouch" package, sought to enforce a registered trademark for its pouch design against another party. These types of actions not only protect a manufacturer's investment in its product, but also advance attempts to control the public image of the product.

There Are Strong Incentives to Enforce Your Rights and Avoid Infringing the Rights of Others

Importantly, a manufacturer also has strong incentives to enforce its trademark and trade dress rights and monitor the market for potential infringers. The failure to monitor and enforce those intellectual property rights could lead to a decrease in the strength or distinctiveness of the manufacturer's trademarks and trade dress, result in limitations placed on particular legal remedies that would otherwise be available, or even result in the abandonment of certain intellectual property rights.

A manufacturer should also take steps to avoid using packaging or advertising that may infringe upon another's trademark or trade dress. Although it may be tempting to use packaging that could cause a prospective purchaser to associate one's product with a particular product category or with a competitor's product, the penalties for the infringement of another's trademark or trade dress can be significant. For example, the trademark or trade dress owner may be entitled to recover significant monetary damages, which could include a disgorgement of profits, as well as reimbursement for its attorneys' fees and the costs associated with a litigation proceeding. Furthermore, a trademark or trade dress owner may be able to obtain an injunction, which could prevent a party from selling or advertising its goods.

Trademarks and Trade Dress Play an Important Role in Product Development and Maintenance

The protections provided by intellectual property, and in particular the protections of trade dress and trademark law, should therefore play a significant part in the development and maintenance of a food or beverage product. With proper planning and guidance, those protections can be used to enhance the value of a product while avoiding the negative, and often significant, consequences of infringing upon another's rights.