

**Legal Aid Foundation of Los Angeles  
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Trademark Basics**

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# Concept of Goodwill

## 信誉

- ◆ Trademarks = the Goodwill of the Product or Business
- ◆ Trademarks fix responsibility or source so that consumers know the quality.
- ◆ Trademarks reduce customers' search costs.
- ◆ 商标=产品或业务的信誉
- ◆ 商标可以用来确定责任或来源，以便让消费者了解质量
- ◆ 商标降低客户的搜索成本

# Trademarks

## 商标

- ◆ Any word, symbol, color, sound or device used to distinguish the goods or services of one person from another's
  - Not every phrase, word or picture that appears on a label is a trademark
  - Critical inquiry is how the designation would be perceived by the public.
- ◆ Trademarks are owned by the person or entity that first uses the mark in commerce
- ◆ 任何用于分辨商品或服务的文字，符号，颜色，声音，或者装置
  - ⑩ 不是任何在商标上出现的每个短语、单词、或者图片都是商标
  - ⑩ 重点在于公众是如何看待这个标志的
- ◆ 商标被首先在商业中使用该商标的个人或实体拥有

Word  
单词

APPLE  
苹果

# Symbol 商标



# Color 颜色



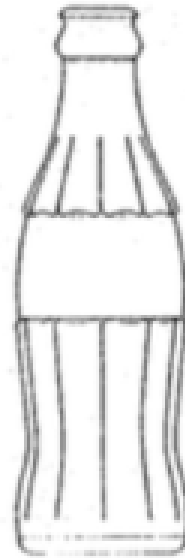
# Sound

# 声音

◆ <https://www.youtube.com/watch?v=SRMpeACi8tY>

# Device – Trade Dress

## 装置 – 商业外观



**US Registration  
Number 1,057,884**



# Not a Trademark

## 什么不是商标？

- ◆ Background
  - ◆ Marketing content (the body of an ad)
  - ◆ Titles of single literary works, movies or songs.
- ◆ 背景
  - ◆ 营销内容（广告正文）
  - ◆ 单篇文学作品、电影或歌曲的标题



# Benefits of Registration:

## 注册的好处：

- Constructive notice to the public of the registrant's ownership of the mark.
- Presumption of the registrant's nationwide right to use the mark in connection with the goods and/or services listed in the registration.
- The use of a U.S. registration upon which to obtain additional registrations in foreign countries.
- The ability to file a U.S. registration with U.S. Customs to prevent the importation of infringing goods.
- 推定告知注册人对商标的所有权。
- 推定注册人在全国范围内有权使用与注册中列出的商品和/或服务相关商标。
- 使用美国注册来获得在外国的额外注册。
- 能够向美国海关提交美国注册，以防止侵权商品的进口

# Spectrum of Strength of Marks 商标强度

blackbaud®

- ◆ Fanciful 奇特的
- ◆ Arbitrary 随意的
- ◆ Suggestive 暗示性的
- ◆ Descriptive 描述性的
- ◆ Generic 通用的



# Fanciful or Arbitrary

## 奇特的或随意的

- ◆ Inherently distinctive and immediately protectable.
  - What is a fanciful mark?
  - What is an arbitrary mark?
- ◆ Danger of Genericide.
- ◆ 具有固有的独特性并可立即受到保护。
  - ⑩ 什么是奇特的标记？
  - ⑩ 什么是随意的标记？
- ◆ 通用的可能性

# Suggestive vs. Descriptive

## 暗示性 v 描述性

- ◆ Descriptive – a mark that immediately conveys some knowledge of a characteristic or quality of the good or service.
- ◆ Suggestive - marks are those that, when applied to the goods or services at issue, require imagination, thought, or perception to reach a conclusion as to the nature of those goods or services.
- ◆ Thus, a suggestive term differs from a descriptive term, which immediately tells something about the goods or services
- ◆ 描述性—立即传达有关商品或服务的特征或质量的一些知识的标记。
- ◆ 暗示性 – 标记是指当应用于有争议的商品或服务时，需要想象力、思考或感知才能得出有关这些商品或服务性质的结论的标记。
- ◆ 因此，暗示性术语不同于描述性术语，描述性术语立即讲述有关商品或服务的信息

# Other "Descriptive" Categories

## 其他“描述性”类别

- ◆ Trade Dress in Product Configuration.
- ◆ Laudatory terms.
- ◆ Geographic terms.
- ◆ Model and grade designations.
- ◆ Personal names.
- ◆ 商业外观中的产品配置。
- ◆ 褒义词。
- ◆ 地理术语。
- ◆ 型号和等级名称。
- ◆ 个人姓名。

# Secondary Meaning

## 次要意义

- ◆ Evidence of prior registrations
- ◆ Amount spent on marketing
- ◆ Sales success
- ◆ Unsolicited media attention
- ◆ Long use in commerce (>5 years)
- ◆ Evidence of copying
- ◆ 先前注册的证据
- ◆ 营销支出金额
- ◆ 销售业绩
- ◆ 未经请求的媒体关注
- ◆ 在商业中长期使用 (>5年)
- ◆ 复制的证据



# Trademark Application Process

## 商标申请流程

- ◆ Intent to Use vs. Actual Use.
- ◆ Requirements: Mark, Description, Date of Use, Drawing, Specimen, Fees.

- ◆ 使用意图与实际使用。
- ◆ 要求：标记、描述、使用日期、图纸、样本、费用。

# Trademark Maintenance Process

## 商标维护流程

- ◆ Section 8 and 15 between the 5<sup>th</sup> and 6<sup>th</sup> year.
  - Requirements
- ◆ Section 8 and 9 between the 9<sup>th</sup> and 10<sup>th</sup> year.
  - Requirements
  - Grace period
  - Costs
- ◆ 第 8 节和第 15 节要求在第 5 年和第 6 年之间递交维护资料。
  - ⑩ 要求
- ◆ 第 8 节和第 9 节要求在第 9 和第 10 年之间递交维护资料。
  - ⑩ 要求
  - ⑩ 宽限期
  - ⑩ 成本

# Abandonment

## 弃权

### ◆ Cease using a mark:

- With intent not to resume.
- Will be presumed after 3 years.

### ◆ Failure to police.

### ◆ 停止使用标记：

⑩ 有意不恢复。

⑩ 在停止使用3年后会被弃权。

### ◆ 未能管辖。

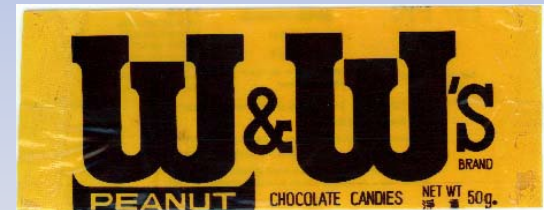
# *Ex Parte* and *Inter Partes* Proceedings

## 单方和多方向诉讼

- ◆ Appeals of Examining Attorneys to the TTAB
  - Process
- ◆ Opposition - publication period
  - Requests for extension of time to oppose
  - Process
- ◆ Cancellation grounds
- ◆ Incontestability status
- ◆ 向 TTAB 对审查员的决定提出上诉
  - ⑩ 过程
- ◆ 反对-公布期
  - ⑩ 请求延长反对时间
  - ⑩ 过程
- ◆ 取消理由
- ◆ 无可争议状态

# Trademark Infringement or Opposition 商标侵权或异议

- ◆ Senior Owner of a Valid Mark  
拥有有效商标更长时间者
- ◆ Likelihood of Confusion Test  
混淆可能性测试
- ◆ Damages 损失
- ◆ Injunction and Seizure of  
Infringing Goods 赔偿禁令和扣  
押侵权货物



# Trademark Searching and Clearance

## 商标检索与审查

- ◆ Training on TESS search strategy
- ◆ Overview of clearance analysis
- ◆ Review of actual searches

# International Classes

## 国际分类

- ◆ Number and description of classes
- ◆ Costs relating to International Classes
- ◆ Tools and Tips for determining classification of goods and services
- ◆ 类别数量和描述
- ◆ 国际分类的费用
- ◆ 确定商品和服务分类的技巧

# Questions? 疑问 ?

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