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Comparative  
Legal Guides**



Practical cross-border insights into trade mark law

# **Trade Marks 2023**

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# Trade Dress Protection in the United States – A Moving Target

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While most people recognise that they should protect their brand names and logos as trade marks, they often overlook the importance of protecting the trade dress – the unique look and feel – of their products and product packaging. This allows competitors to imitate their trade dress and cause consumer confusion.

In an increasingly aggressive marketplace, big box retailers fill their shelves with competing products placed right next to one another. Similarly, e-commerce websites display multiple thumbnails of competing products on the same webpage. In both of these situations, it is the trade dress of the product or its product packaging that makes the first impression on the consumer. The trade dress is the first visual cue identifying the source of the product to the consumer. If competitors' trade dress is the same or too similar, this will lead to consumer confusion.

## What is Trade Dress?

A trade mark identifies and distinguishes one party's goods from those of others. It also assures consumers of the quality of the goods bearing that mark. Under the U.S.'s Lanham (Trade-mark) Act, 15 U.S.C. § 1051 *et seq.*, a trade mark can be a word, name, symbol, or device, or any combination thereof.

While the definition of a trade mark is actually quite broad, companies have historically focused their trade mark protection efforts on their brand names and logos. This is because consumers are influenced by brands and the reputation such brands represent. Several of the most well-known brand names are shown in the table below. By no coincidence, these brand names are also the most valuable due to the goodwill and brand awareness they have developed.

	Apple	Microsoft	Amazon	Google
U.S. Reg. No.	2078496	1200236	1078312	2806075
Brand Value <sup>1</sup>	\$482.2 B	\$278.3 B	\$274.8 B	\$251.7 B

In contrast to brand names and logos, trade dress extends to the look and feel of a product. This can include features such as size, shape, colour, texture, and graphics. For example, Christian Louboutin's well-known red lacquered outer sole contrasting with the colour of the upper and Adidas's triple stripes are protectable product trade dress.

Beyond the design of a product, trade dress can also protect the design of the packaging in which a product is sold. The design of the iconic Coca-Cola bottle and Heinz squeeze bottle are examples of protectable packaging trade dress.

Like any trade mark, to be protectable, trade dress must be distinctive, either by being inherently distinctive or having acquired distinctiveness by developing secondary meaning. Whether the trade dress is distinctive will depend upon the

nature of the trade dress for which protection is sought. In addition to distinctiveness, trade dress must also be non-functional to be entitled protection.

## Two Pesos – The U.S. Supreme Court Starts Expanding Trademark Protection to Trade Dress

Prior to *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763 (1992), the U.S. Courts of Appeals were split on whether trade dress could ever be inherently distinctive and, therefore, protected under trade mark law. That question was resolved in *Two Pesos*, where the U.S. Supreme Court held that the trade dress employed by Taco Cabana in its restaurants was protectable under the Lanham Act.

Taco Cabana is a Tex-Mex-inspired chain of restaurants that began operations in 1978. The restaurants feature a festive eating atmosphere. The interior dining and patio areas are decorated with artifacts, bright colours, paintings, and murals. The patio has an interior and an exterior area in which the interior patio can be sealed off from the outside patio by closing overhead garage doors. The exterior of the building has a stepped roofline and a festive and vivid colour scheme that includes stripes along the roofline and neon stripes on the awnings. In 1985, Two Pesos opened a competing restaurant using similar design features.

Taco Cabana sued Two Pesos for trade dress infringement in 1986. The jury found that although Taco Cabana's trade dress was inherently distinctive, it had not acquired secondary meaning and was not entitled trade mark protection. The U.S. Court of Appeals for the Fifth Circuit affirmed.

Before the Supreme Court, both parties debated what is required for trade dress to be protectable as a trade mark. Two Pesos argued that Taco Cabana's trade dress had not been shown to be "distinctive" because Taco Cabana had not established that the trade dress has established "secondary meaning".

Analysing the Lanham Act, the Supreme Court recited the five categories of distinctiveness for trade marks: generic; descriptive; suggestive; arbitrary; and fanciful. The Court noted that a "generic" mark (such as Carpet Cleaning Company for carpet cleaning services) cannot be distinctive and cannot be registered as a trade mark. A "descriptive" mark (such as American Airlines for airline services) is not inherently "distinctive", but can acquire distinctiveness if the mark has developed "secondary meaning". "Secondary meaning" is when, in the minds of the public, the primary significance of the mark is to identify the source of the product rather than describe the product itself. Marks that are "suggestive" (such as Burger King for restaurant services), "arbitrary" (Apple for computers), or "fanciful" (Kodak for cameras) are inherently distinctive and do not require any showing of "secondary meaning".

Agreeing with the District Court and Court of Appeals, the Supreme Court held that Taco Cabana’s restaurant trade dress was not generic or descriptive. Thus, the trade dress was inherently distinctive and did not require a showing of secondary meaning. The Court noted that to require secondary meaning in the case of an inherently distinctive trade dress would penalise parties just starting a business and whose trade dress has not yet developed customer recognition.

### Qualitex – Colours are Protectable Trade Dress

In *Qualitex Co. v. Jacobson Prod. Co.*, 514 U.S. 159 (1995), the U.S. Supreme Court considered whether a colour can be protectable trade dress.

In the 1950s, Qualitex began manufacturing and selling cleaning pads for dry cleaning establishments. To distinguish its products from those of others, the material used to enclose Qualitex’s pads was dyed a green-gold colour. In 1989, Jacobson began selling cleaning pads with a similar colour.

Qualitex registered its colour as a trade mark with the United States Patent and Trademark Office (“USPTO”) and then filed suit against Jacobson for infringement. Qualitex’s registration describes its trade mark as “a particular shade of green-gold applied to the top and side surfaces of the goods”.

The Supreme Court noted that the language of the Lanham Act and the basic underlying principles of trade mark law include colour within the universe of things that can qualify as a trade mark. Like other types of trade marks, a colour is capable of identifying and distinguishing one party’s goods from those of another and can indicate the source of the goods.

The Court found no “obvious theoretical objection to the use of colour alone as a trademark”. However, noting that there is nothing inherently distinctive about a colour, the Court then stated that the colour has to develop secondary meaning before it will identify and distinguish a particular brand and indicate the source of the goods. Accordingly, to be registered as a trade mark, a colour must acquire distinctiveness first. Consequently, the Court held that, unless there is some special reason that militates against the use of the colour alone as a trade mark, trade mark law protects Qualitex’s use of the green-gold colour on its press pads.

### Walmart – Restraining Trade Dress Protection for Product Designs

In *Walmart Stores, Inc. v. Samara Bros.*, 529 U.S. 205 (2000), the U.S. Supreme Court held that product designs, in contrast to product packaging, are not inherently distinctive.

Samara Brothers, Inc. designs and manufactures children’s clothing. In 1995, Walmart had a line of children’s clothing created based on images of Samara’s products. Samara sued Walmart for, among other things, infringement of the unregistered trade dress for Samara’s clothing. The jury found in favour of Samara on all of its claims. Walmart then filed a motion for judgment as a matter of law, claiming that there was insufficient evidence to support a conclusion that Samara’s clothing designs could be legally protected as distinctive trade dress. The District Court denied the motion for judgment as a matter of law, and the Second Circuit affirmed the Court’s denial of the motion.

In its appeal to the Supreme Court, Walmart argued that a product’s configuration is descriptive of the product by its very nature and, therefore, can never be inherently distinctive. It then argued that, since a product design is not inherently distinctive, Samara Brothers should have been required to establish secondary meaning in its trade dress before it was protected under the Lanham Act. In response, Samara Brothers argued that, because its trade dress is neither generic nor descriptive, under *Two Pesos* the trade dress is inherently distinctive.

The Supreme Court noted that the Lanham Act permits the registration of a mark that has become distinctive of an applicant’s goods and services in commerce. However, nothing in the Act demands the conclusion that every category of trade mark is necessarily inherently distinctive. Moreover, the Court pointed out that in *Qualitex*, with respect to at least one category of marks – colours – it has already held that colour marks can never be inherently distinctive. The Court then held that product designs, like colours, are not inherently distinctive.

To reach this holding, the Court distinguished product designs from word marks and product packaging. It stated that consumers are predisposed to regard word marks and product packaging as indications of the source of the goods, which is why such symbols almost automatically tell a consumer that they refer to a brand. In contrast, consumers are not predisposed to equate product design features, such as colour, with the source of the goods. Rather, consumers are aware that even the most unusual of product designs – such as a cocktail shaker shaped like a penguin – is intended to render the product more useful or more appealing.

### Forney – The Federal Circuit Distinguishes Qualitex and Walmart

In 2014, Forney Indus. (“Forney”) sought to register its gradient colour mark for use on the packaging of its welding and machining goods. In its application, Forney described its mark as “a solid black stripe at the top. Below the solid black stripe is the colour yellow which fades into the colour red. These colours are located on the packaging and or labels”.

The examining attorney refused registration of Forney’s colour mark on the ground that the mark is not inherently distinctive. In the refusal, the examining attorney stated that colour marks are only registrable with sufficient proof of acquired distinctiveness.

The USPTO Trademark Trial and Appeal Board (“TTAB”), relying on the Supreme Court decisions in *Two Pesos*, *Qualitex*, and *Walmart*, affirmed the examining attorney’s decision. The TTAB treated Forney’s mark as a colour mark applied to product packaging and held that when assessing marks consisting of colour, there is no distinction between colours applied to products and colours applied to product packaging. Thus, under *Walmart* and *Qualitex*, a colour on a product or its packaging can never be inherently distinctive and may only be registered after a showing of acquired distinctiveness.

Continuing its effort to establish trade mark rights in its product packaging, Forney appealed the TTAB’s refusal to the Federal Circuit Court. The Federal Circuit held that the TTAB erred by holding that: (1) a multi-colour mark can never be inherently distinctive; and (2) product packaging marks that employ colour cannot be inherently distinctive in the absence of a well-defined peripheral shape or border.

In its analysis, the Federal Circuit noted that neither the Supreme Court nor the Federal Circuit had directly addressed whether a multi-colour mark applied to product packaging can be inherently distinctive. In *Qualitex*, the colour at issue was applied to the product. Further, while the Supreme Court “implied that a showing of acquired distinctiveness may be required before a colour mark can be protectable, it did not expressly so hold”. Then, in *Walmart*, the Supreme Court’s analysis was focused on a product design, and the Court specifically distinguished product design from product packaging marks. Despite the Supreme Court’s statements regarding colour, the Federal Circuit limited the holdings in *Qualitex* and *Walmart* to product design trade dress.

Next, looking at Forney’s multi-colour product packaging mark, the Federal Circuit found it to be more like the packaging trade dress mark at issue in *Two Pesos* than the product design

marks in *Qualitex* and *Walmart*. The Court stated that Forney's colour mark "falls firmly within the category of marks the Court described as potential source identifiers". Thus, colour marks can be inherently distinctive when used on product packaging, depending upon the character of the colour design.

Restating the test set forth in *Seabrook Foods, Inc. v. Bar-Well Foods, Ltd.*, 568 F.2d 1342 (CCPA 1977), the Federal Circuit stated that in determining the inherent distinctiveness of colour trade dress such as Forney's, the question to be answered is whether the trade dress "makes such an impression on consumers that they will assume" the trade dress is associated with a particular source. To answer that question, the following factors must be evaluated: (1) whether the trade dress is a "common" basic shape or design; (2) whether it is unique or unusual in the particular field; (3) whether it is a mere refinement of a commonly adopted and well-known form of ornamentation for a particular class of goods viewed by the public as a dress or ornamentation for the goods; or, inapplicable here; and (4) whether it is capable of creating a commercial impression distinct from the accompanying words.

### What if Your Trade Dress is Not Inherently Distinctive?

If a trade dress is not "inherently distinctive", the mark must acquire distinctiveness by developing "secondary meaning" to be protectable. "Secondary meaning" is when, in the mind of the consumer, the primary significance of the mark is to identify the source of the product rather than describe the product or a feature of the product.

Establishing acquired distinctiveness by actual evidence was explained in *In re Owens-Corning Fiberglass Corp.*, 774 F.2d 1116, 1125 (Fed. Cir. 1985) as follows:

"An evidentiary showing of secondary meaning, adequate to show that a mark has acquired distinctiveness indicating the origin of the goods, includes evidence of the trademark owner's method of using the mark, supplemented by evidence of the effectiveness of such use to cause the purchasing public to identify the mark with the source of the product."

The kind and amount of evidence necessary to establish that a mark has acquired distinctiveness in relation to goods or services depends on the nature of the mark and the circumstances surrounding the use of the mark in each case.

In *Converse, Inc. v. ITC*, 909 F.3d 1110 (Fed. Cir. 2018), the Federal Circuit Court explained that the secondary meaning analysis primarily seeks to determine what is in the mind of the consumers, and the analysis whether distinctiveness has been acquired must be conducted with this purpose in view. Noting that "[e]ach circuit [court of appeals] that has addressed secondary meaning – 11 circuits in all – has formulated some version of a multifactor test" to assess whether a mark has acquired secondary meaning, the Federal Circuit clarified its own test, identifying the following factors that should be "weighed together":

1. association of the trade dress with a particular source by actual purchasers (typically measured by customer surveys or customer testimony);
2. length, degree, and exclusivity of use;
3. amount and manner of advertising (in particular, "look for" advertising that draws the consumer's attention to the trade dress as a source identifier);
4. amount of sales and number of customers;
5. intentional copying; and
6. unsolicited media coverage of the product embodying the mark.

To put it simply, the brand owner has to establish that it has spent a significant amount of time, money, and effort promoting the trade dress at issue and, as a result, consumers now identify that trade dress with the source of the product.

### Trade Dress Must Also be Non-Functional

In addition to being distinctive, trade dress must also be non-functional to be protectable. Trade dress is functional if it is essential to the use or purpose of the product or affects the cost or quality of the product. Such a feature is likely to be used by different sellers of the same product and, therefore, cannot identify a particular source.

A feature of a product is "essential" if the design of that feature is dictated by the function to be performed. The fact that a design feature performs a function does not make it essential to the performance of that function. It is, instead, the absence of alternative designs to perform the same function that renders the feature functional.

The factors that must be considered when determining functionality include: (1) whether a utility patent discloses the utilitarian advantages of the design; (2) whether advertising materials tout the design's utilitarian advantages; (3) whether functionally equivalent designs are available to competitors; and (4) whether the design results in a comparatively simple or cheap method of manufacturing the product.

### TraFFix Devices – Utility Patents Evidence Functionality

In *TraFFix Devices, Inc. v. Marketing Displays, Inc.*, 532 U.S. 23 (2001), the U.S. Supreme Court established that a utility patent is strong evidence that the features claimed therein are functional and not protectable as trade dress.

Marketing Displays manufactures temporary traffic signs for which it held patents on a "dual-spring" design. In this design, the sign is mounted to a stand by two springs, which enable the sign to resist high winds. When Marketing Displays' patents expired, TraFFix began to produce signs that included a dual-spring design. Marketing Displays sued, claiming that its sign design is protected as trade dress.

Under the Lanham Act, when trade dress is not registered, the person asserting trade dress protection has the burden of proving that the matter sought to be protected is not functional. When doing so, a utility patent is strong evidence that the features claimed therein are functional until the party seeking trade dress protection proves otherwise. Looking at Marketing Design's patents, the Court found that the dual-spring design serves the important purpose of keeping the sign upright even in heavy wind conditions. The dual-spring design affects the cost of the device as well. Thus, the design of Marketing Design's sign is functional and not protectable as trade dress.

### Morton-Norwich – Design Patents Evidence Non-Functionality

Converse to a utility patent, a design patent is a factor that weighs against a finding of functionality. This is because design patents by definition protect only ornamental and non-functional features. However, ownership of a design patent does not in itself establish that a product feature is non-functional, and can be outweighed by other evidence supporting the functionality determination.

In *In re Morton-Norwich Products, Inc.*, 671 F.2d 1332 (CCPA 1982), the United States Court of Customs and Patent Appeals (predecessor to the Federal Circuit Court) considered whether

Morton-Norwich's container design is protectable trade dress. Noting that Morton-Norwich owned a design patent on the external appearance of the container, the Court held that the design patent is presumptive evidence of non-functionality – evidence that may support a similar trade mark claim.

### Sweet Success – Hershey's Registers its Candy Bar Trade Dress

In April 2013, Hershey Chocolate and Confectionery LLC (“Hershey’s”) was granted a trade mark registration for the design and configuration of its candy bar. U.S. Trademark Registration No. 4322502. This well-known configuration of a candy bar consists of 12 equally sized recessed rectangular panels arranged in a four-by-three panel format with each panel having its own raised border within a large rectangle.

When Hershey’s filed its application to register the mark in November 2009, the examining attorney for the USPTO initially refused registration of the trade dress on the ground that it is functional, and not distinctive. The examining attorney asserted that the flat rectangular shape and the scoring of the candy bar into smaller pieces are functional features that constitute an absolute bar to registration. In support, the examining attorney relied in part on a utility patent, claiming that Hershey’s used a method of scoring the candy so that it may be more easily broken into smaller pieces.

On appeal, the TTAB agreed that the individual design elements are functional. However, the TTAB noted that Hershey’s was not seeking to register “a segmented rectangular candy bar of no particular design”. Rather, Hershey’s was seeking to register “a candy bar comprising all of the elements shown in the drawing and in the description of the mark, i.e., ‘twelve...equally-sized recessed rectangular panels arranged in a four panel by three panel format with each panel having its own raised border within a large rectangle’”.

While the rectangular shape or segments by themselves are functional for candy bars, the TTAB noted that it must “balance these functional elements against any non-functional elements to determine whether the mark as a whole is functional”. It then identified the other elements of Hershey’s mark, “namely, the twelve recessed rectangles with a raised border design in a four by three format”, which the TTAB stated, “form a prominent part of [Hershey’s] mark”. Balancing the significance of the design of the recessed rectangles with a raised border against the rectangular shape and segments, the TTAB held that the candy bar configuration mark, considered in its entirety, is not functional.

Next, the TTAB addressed whether Hershey’s mark had acquired distinctiveness. After consideration of the substantial evidence submitted by Hershey’s, the TTAB was persuaded that the mark had acquired distinctiveness. Hershey’s direct evidence that the design had acquired distinctiveness was a survey of relevant consumers who were asked to identify the source of the “four-by-three” panel candy bar configuration. The TTAB also considered circumstantial evidence submitted by Hershey’s, including a declaration that Hershey’s had been using the mark for over 40 years, sales figures over a 12-year period exceeded \$4 billion, and Hershey’s had spent more than \$186 million to advertise products embodying the candy bar configuration. The TTAB acknowledged that although Hershey’s did not promote the candy bar configuration using “look for” advertisements, some of Hershey’s advertisements did display the candy bar configuration prominently. Lastly, Hershey’s also submitted evidence of purported attempts by a third party to copy the design of the candy bar configuration for the shape of a brownie baking pan.

Based upon consideration of all the evidence on record, the TTAB held that Hershey’s had established that the candy bar configuration had acquired distinctiveness and was entitled to registered trade mark protection.

### Trade Dress Protection is Strengthened – Presumption of Irreparable Harm

The Trademark Modernization Act of 2020 (“TMA”) was signed into law on December 27, 2020 as part of the Consolidated Appropriations Act, 2021. The TMA established a rebuttable presumption of irreparable harm when seeking injunctive relief from trade mark infringement.

Prior to the TMA, the circuit courts were split on whether irreparable harm may be presumed in trade mark cases upon a finding of infringement or a showing of likelihood of success on the merits (i.e., likelihood of confusion). A presumption of irreparable harm had been the longstanding rule until the U.S. Supreme Court’s decision in the patent case *eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006), which held that patent plaintiffs are not entitled to such a presumption.

The TMA established a rebuttable presumption of irreparable harm, resolving the circuit split and making it easier for trade mark owners to obtain injunctive relief across jurisdictions. Effective immediately, the TMA established that plaintiffs seeking a preliminary injunction or temporary restraining order are entitled to a rebuttable presumption of irreparable harm if they show a likelihood of success on the merits. Plaintiffs seeking a permanent injunction are entitled to the presumption upon a finding of trade mark infringement or a federal unfair competition, false advertising, dilution, or cybersquatting violation.

This change creates a national, uniform standard and makes it much easier for trade mark owners to obtain injunctive relief, without the need to separately prove irreparable harm. While the presumption can be rebutted, commentators note that this would be unlikely based on past, pre-eBay experience.

### A Comprehensive Approach to Protecting Trade Dress

Competition in the marketplace continues to get easier and more aggressive. Thus, while the legal standards continue to change for trade dress protection, the increasing need for strong trade dress enforcement has not. Accordingly, companies must establish and utilise a comprehensive plan for obtaining and supporting trade dress protection. Moreover, that plan must be periodically reviewed and updated to ensure compliance with new legal precedent.

#### A. Select a distinctive design

As with all trade marks, protection will be easier to obtain and enforce if a party selects a distinctive trade dress. During the selection process, the overall appearance and selection of design elements needs to be carefully considered. This includes features such as size, shape, colour, texture, and graphics.

During the selection process, the following should be kept in mind:

1. Select features (e.g., colour and shape) that are unique to the relevant product or service and to the relevant market.
2. Include fanciful and arbitrary design elements (e.g., elements that are ornamental and not useful).
3. If the trade dress is for a product, the design elements must be non-functional.

## B. Obtain early protection

Protection for product trade dress and certain design elements, such as a single colour, as a trade mark will not be available until it has acquired distinctiveness, which will take time. However, early protection may be obtained through design patent or copyright registration.

A design patent will protect the product trade dress for a period of 14 years. This will provide the necessary time for the trade dress to develop secondary meaning without interference from competitors.

A design patent application must be filed before the one-year “on sale” bar under U.S. patent law, 35 U.S.C. § 102(b). This means that design patent protection must be sought early when the trade dress is being selected and first placed in use.

Copyright protection is also a possibility for many features of trade dress, such as graphics and other features that are not “useful” or functional. If obtained, copyright protection will last for the life of the author plus 70 years, or for 120 years if the work qualifies as a “work made for hire”.

## C. Collaborate with your marketing team

The success of obtaining and supporting trade dress protection often depends on the marketing of the trade dress. Early and consistent communications with your marketing team are the key to ensuring that advertising and marketing materials support rather than undermine trade dress protection.

Marketing materials should prominently display and refer to the trade dress as a source identifier. “Look for” advertising (such as UPS’s “What can Brown do for you?” and Corning’s “Think Pink”) has been identified as particularly useful to direct consumers’ attention to certain trade dress features so that the consumers recognise those features as source identifiers and associate them with a single source. On the other hand, marketing materials should not mistakenly promote the trade dress feature as useful or functional.

## D. Register the trade dress with the USPTO

When seeking registration of a trade dress, the applicant should keep the following in mind:

1. Carefully select what elements to include as the trade dress in the application. On the one hand, there is an urge to list as many elements of the trade dress as possible to be able to show how distinctive it is. On the other hand, there is a desire to have as few elements as possible so, when enforcement is required, infringement is easier to establish.
2. The requirement that product trade dress and certain design elements, such as a single colour, must acquire secondary meaning before they may be protected prohibits the filing of an application based on the applicant’s “intent to use” the trade mark.
3. For trade dress that is in use, but secondary meaning has not yet been acquired, registration on the USPTO’s “Supplemental Register” pursuant to 15 U.S.C. § 1091 is available. Registration on the Supplemental Register still requires that the mark be capable of distinguishing the applicant’s goods and services from the goods and services of others. While placing a trade mark on the Supplemental Register produces fewer benefits than registration on the Principal Register, it still provides notice of ownership. This notice makes it far less likely that someone will adopt and use the same trade dress. Further, the mark will be on file with the USPTO and can be cited by an examining attorney against a later application by another party to register a confusingly similar trade mark.
4. The USPTO is a conservative body. An applicant seeking to register a trade dress should anticipate an office action requiring that the distinctiveness and/or non-functionality of the trade dress be addressed.
5. Consumer perception is key. Be prepared to submit “look for” and similar advertising directly promoting the trade dress to consumers. Also be prepared to conduct surveys and obtain similar evidence establishing that consumers recognise and associate the trade dress with the trade mark owner.

## Endnote

1. Interbrand, Best Global Brands 2022, <https://interbrand.com/best-global-brands>.





**Ron DiCerberio** is a Shareholder at McAndrews and has been active in all aspects of the firm's intellectual property practice. This includes: patent, trade mark and copyright prosecution and litigation; managing intellectual property portfolios; unfair competition; licensing; trade mark oppositions and cancellations; and product development and acquisition. His primary focus is on trade mark and design rights, both in the U.S. and internationally.

Based on over 20 years of experience, Ron guides clients through the selection, protection and enforcement of trade mark and design rights. More specifically, he helps clients evaluate and assess the risk associated with the adoption and use of a trade mark or design in the U.S. or worldwide. Next, utilising unique knowledge of international trade mark laws, he works with the client to develop a strategy for obtaining design patent, trade mark, and/or copyright protection for a trade mark or design. By completing those first two steps, clients are in an advantageous position to protect their intellectual property rights.

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