

**International  
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Legal Guides**



# Trade Marks

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# Trade Dress Protection Continues to Evolve in the United States

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In an ever-changing marketplace, the need to distinguish one's product from another's is increasingly more difficult. Retailers' shelves are stocked with competing products placed right next to one another. E-commerce websites display multiple thumbnails of competing products on the same webpage. This facilitates a high risk of consumer deception and confusion.

While most people recognise that they need protect their brand name as a trade mark, they often overlook the importance of protecting the trade dress – the unique look and feel – of their product and product packaging. A product's trade dress is a consumer's first visual cue identifying the desired product. Established trade dress reassures consumers by conveying a product's source and quality information. The more distinctive and recognisable a brand's trade dress is, the more challenging it becomes for others to imitate it in the marketplace and cause consumer confusion.

## What is Trade Dress?

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

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>	\$502.7 B	\$316.7 B	\$276.9 B	\$260.3 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 sole, the red sealing wax on a bottle of Maker's Mark, Adidas's triple stripes, and the shape of a Hershey's Kiss chocolate are protectable 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. The colour of Reese's Peanut Butter Cup wrappers and Tiffany jewellery boxes are other 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 Trade Mark 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 in which 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. Based on the jury's finding that Taco Cabana's trade dress was inherently distinctive, but had not acquired secondary meaning, the District Court entered judgment for and awarded damages to Taco Cabana. 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 could not be "distinctive" because Taco Cabana had not established that the trade dress had obtained "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, Taco Cabana's trade dress was inherently distinctive and proof of secondary meaning was not required. 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”.

In its analysis, 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 a colour has to develop secondary meaning before it can identify and distinguish a particular brand and indicate the source of the goods. Accordingly, to be registered as a trade mark, a colour must first acquire distinctiveness. 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 designs and manufactures children's clothing. In 1995, Walmart had a line of children's clothing created based on images of Samara Brothers' products. Samara sued Walmart for, among other things, infringement of the unregistered trade dress for Samara Brothers' clothing. The jury found in favour of Samara Brothers 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 – are intended to render the product more useful or more appealing.

### Forney – the Federal Circuit Distinguishes Qualitex and Walmart for multicolour marks

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 multicolour 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 multicolour mark applied to product packaging can be inherently distinctive. Distinguishing *Qualitex* and *Walmart*, the Court noted that the colours at issue were applied to the products. Further, in *Walmart*, the Supreme Court specifically distinguished product designs from product packaging marks. Thus, the Federal Circuit limited the holdings in *Qualitex* and *Walmart* to product design trade dress.

Next, looking at Forney's multicolour 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”. Therefore, colour marks can be inherently distinctive when used on product packaging, depending upon the character of the colour design.

### Seabrook – Establishing the Factors used to Determine Whether Trade Dress is Distinctive

A word, name, symbol, or device that identifies the source of a good or service is called “distinctive”. The distinctiveness of trade marks consisting of words is determined using the well-known *Abercrombie* spectrum. Words that are “arbitrary” (such

as Apple for computers), “fanciful” (such as Kodak for cameras), or “suggestive” (such as Burger King for restaurant services) are inherently distinctive because consumers will automatically treat such words as trade marks. On the other hand, a “generic” word (such as Carpet Cleaning Company for carpet cleaning services) is commonly used to identify a good or service. A generic word does not identify the source of the good or service. Thus, they are not distinctive and cannot be registered as a trade mark. A “descriptive” mark (such as American Airlines for airline services) conveys information about the goods or services. A descriptive mark is not distinctive, but can acquire distinctiveness and be protected as a trade mark if the mark has developed “secondary meaning”. Such secondary meaning is when, in the minds of the public, the primary significance of the mark is to identify the source of the goods or services rather than to describe the goods or services. The *Abercrombie* spectrum is based on the meaning of the words comprising the trade mark. As such, it does not apply to trade marks comprising trade dress.

In *Seabrook Foods Inc. v. Bar-Well Foods Limited*, 568 F.2d 1342 (CCPA 1978), the United States Court of Customs and Patent Appeals (“CCPA”), predecessor to the Federal Circuit Court, had to determine whether the leaf design that Seabrook used on its product packaging functioned as a trade mark separately from the words contained in the design. To do so, the Court formulated a test to determine whether a claimed trade dress is inherently distinctive. Under this test, the question to be answered is whether the trade dress makes such an impression on consumers that they will assume that the trade dress is associated with the source of the good or service. To answer that question, the Court held that the following factors must be evaluated (the “Seabrook Factors”):

1. whether the proposed mark constitutes a “common” basic shape or design;
2. whether the proposed mark is unique or unusual in the field in which it is used;
3. whether the proposed mark is a mere refinement of commonly adopted and well-known forms of ornamentation for the particular class of goods or services viewed by the public as a dress or ornamentation for the goods or services; and
4. whether the proposed mark is capable of creating a commercial impression distinct from any accompanying words.

Any one of the Seabrook Factors, by itself, may be determinative as to whether the trade dress is inherently distinctive.

### The TTAB Finds Architectural Trade Dress to be Akin to Product Packaging

In a 2023 decision, the TTAB held that the shape of a building could be inherently distinctive and, therefore, a registrable trade mark.

In *In re Seminole Tribe of Florida*, 2023 U.S.P.Q.2d 631 (TTAB 2023), Seminole Tribe sought to register the shape of its building as a trade mark for hotel and casino services. The mark was described as “consisting of a three-dimensional building in the shape of a guitar”. The examining attorney refused registration of the mark on the ground that the building design is non-distinctive trade dress and fails to function as a trade mark.

Under the guidance of *Two Pesos* and *Walmart*, the TTAB held that the shape of a building is neither product packaging nor product design, but some “*tertium quid*” (third thing) that is akin to product packaging and that Seminole Tribe’s guitar-shaped building is inherently distinctive. In making this finding, the TTAB stated that it focused on the uniqueness of the building’s trade dress in the relevant industry.

The TTAB further supported its finding by applying the Seabrook Factors to determine whether the shape of Seminole Tribe’s building is, in fact, inherently distinctive. The TTAB held that, “[g]iven the uniqueness of Applicant’s three-dimensional Guitar Design trade dress as applied to Applicant’s Services, we find Applicant’s Mark is of a type that consumers would immediately rely on to differentiate Applicant’s Services from casinos or hotel, restaurant, and bar services offered by others, and that it therefore constitutes inherently distinctive trade dress”.

### 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 trade mark 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 Displays’ 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 Displays’ 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 CCPA 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.

### The TTAB Finds that a Colour Resulting from a Manufacturing Process is Functional

In *CoorsTek Bioceramics LLC v. CeramTec GmbH*, 2022 TTAB LEXIS 455 (TTAB December 6, 2022), the TTAB granted CoorsTek’s petition to cancel CeramTec’s trade dress registrations for the colour pink as applied to a composition for hip joint implant parts.

Since 1974, CeramTec has manufactured prosthetic implant components for hip, knee and shoulder joint replacements. CoorsTek asserted that the colour pink, as applied to those components, is functional because, when chromium oxide (“chromia”) is added to the ceramic compound used in the manufacturing process, those components naturally appear pink in colour.

The TTAB held that the colour pink (caused by the addition of chromia) of the compound used to make ceramic hip implant components is functional. This decision was based in part on CeramTec’s utility patents that disclose the benefits of using chromia to improve the mechanical properties of the ceramic compounds used to create medical devices. CeramTec’s public statements, including technical literature, Food and Drug Administration (“FDA”) submissions, and product advertising also touted the advantages of using chromia in the manufacturing process and noted that the use of chromia is the reason for the pink colour of the material.

Relying on the decision in *TraFFix*, the TTAB found that CeramTec’s patents are strong evidence that the colour pink for ceramic hip implant components is functional. The TTAB further found that CeramTec’s “extended and continual advertising and other public statements” highlighted the utilitarian advantages of chromia in its ceramic product mix and that adding chromia turns the product pink.

The TTAB concluded that the colour pink, caused by the addition of chromia, of the compound used to make ceramic hip implant components is functional and therefore unregistrable. The TTAB also stated that “[t]he impression we are left with is that [CeramTec] sought trademark protection [for the color pink] to stave off competition after the expiration of its patent protection”.

On February 3, 2023, CeramTec filed a notice of appeal of the TTAB’s decision to the Federal Circuit Court. In its appeal brief, CeramTec argued that the burden of disproving functionality based on the Supreme Court’s *TraFFix* decision only applies when a party seeks trade mark protection for the feature whose utilitarian advantages are disclosed in a patent. CeramTec then argued that the patents relied on by the TTAB did not disclose that the amount of chromia required to create the colour pink has any advantage. Therefore, *TraFFix* does not apply. Arguments in this case will be heard by the Federal Circuit later this year.

### 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 2023, <https://interbrand.com/best-global-brands>



**Ron DiCerberio** is a Shareholder at McAndrews. While he has been active in all aspects of the firm's intellectual property practice, his primary focus is on trade mark and design rights, both in the U.S. and internationally.

Based on over 25 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. and worldwide. Next, utilising unique knowledge of U.S. and non-U.S. intellectual property laws, he works with the client to develop a strategy for obtaining, maintaining, and enforcing design patent, trade mark, and/or copyright protection for their trade mark or design.

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- Application for a Trade Mark
- Absolute Grounds for Refusal
- Relative Grounds for Refusal
- Opposition
- Registration
- Registrable Transactions
- Revocation
- Invalidity
- Trade Mark Enforcement
- Defences to Infringement
- Relief
- Appeal
- Border Control Measures
- Other Related Rights
- Domain Names
- Current Developments