

From Palette to Protection: When Does Color Function as a Trademark?

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Back when my daughter was in third grade, parents were invited to her classroom to talk about their jobs. I talked about trademarks and brands, discussing products they would appreciate, like HOT WHEELS miniature cars and AMERICAN GIRL dolls. At one point, I told the students that a color can be a trademark and that Mattel claims the right to the color pink as a trademark associated with their BARBIE products. A little girl named Emma spoke up and said, “That doesn’t seem fair that just one company can use a color.”

What Emma didn’t know was that she isolated the same issue that the US Supreme Court had considered back in the 1990s when the Court held, in a case involving green-gold dry cleaning machine pads, that a company could claim color as a trademark, but only after years of exclusive use and evidence that the public associates the color with a single source. (By the way, Emma is now in law school.)

So what does it take to be able to claim that a color is exclusively for use by one source? First, to be clear, even when a company is able to claim color as a trademark, its rights will only be limited to the goods or services for which the color is used or closely related goods/services. So while Tiffany could stop another jewelry company from using its robin’s-egg blue color, Tiffany would not be able to prevent, say, an HVAC installation company from using this shade.

To be eligible for trademark protection, a color must be:

1. **Non-functional:** The color should not serve a functional purpose related to the product or service. In other words, it should be purely aesthetic.
2. **Recognized by the public:** The color must have gained recognition and distinctiveness in the minds of consumers.

Examples in Advertising: UPS’s Iconic Brown

One of the most famous examples of a company successfully using color as a trademark is United Parcel Service (UPS).

1. **Instant Recognition:** UPS’s brown delivery trucks are instantly recognizable, and the color has become synonymous with the brand’s reliable package delivery services.
2. **Consistent Branding:** UPS consistently uses brown in its advertising, packaging, and uniforms. This uniformity reinforces the brand’s image and helps it stand out in a crowded market.
3. **Promotional Campaigns:** “What Can Brown Do For You?” UPS has run advertising campaigns centered around its brown color, emphasizing the reliability and trustworthiness associated with the color brown.

Challenges and Legal Considerations

While companies like UPS have successfully used color as a trademark, it's important to note that securing trademark protection for a color can be challenging. Courts often require extensive evidence of distinctiveness and consumer recognition. Additionally, competitors may challenge the validity of color trademarks, arguing that the color is functional or not sufficiently distinctive.

Conclusion

Color can be a powerful tool for branding and marketing, and some companies, like UPS, have effectively incorporated it into their trademark strategy. However, the legal requirements for securing and defending a color trademark are rigorous. Businesses considering color as a trademark should seek legal counsel to navigate the complexities of trademark law and protect their unique brand identity.

If you would like to discuss trademark protection for colors, please reach out to me.