THORNBURG LLP

TRADE DRESS

Brand Protection

Trade dress is the overall image of a product used to present it to its purchasers. Such things as product's size, shape, color, graphics, packaging, and label can all be components in trade dress. A trademark on the other hand is thought of as something more specific, such as a name or logo. As the law developed from protecting mainly packaging, to covering certain products themselves, Barnes & Thornburg has participated in that development.

The law regarding trade dress can overlap areas such as trademark, unfair competition, copyright and patent. Principles of enforceability involve aspects of "secondary meaning" much like certain types of word marks, where consumer recognition and identification with the product source are required. Additionally, trade dress must be "non--functional" in order to be protectable.

The issue of functionality can therefore overlap patent law. Features such as ornamental graphics on packaging, or sculptural aspects of the product itself can implicate copyright concerns.

As in a trademark case, Barnes & Thornburg's attorneys are familiar with likelihood of confusion provable by circumstantial evidence, implication from the competitive environment or expert survey research.

Additionally, by dealing with appropriate evidence, Barnes & Thornburg attorneys have protected and enforced trade dress for clients. In other situations, we have successfully defended our clients when trade dress issues have been asserted.

Barnes & Thornburg can advise clients on trade dress issues and provide counsel on the need to compete effectively using functional and

non-distinctive features.