workman nydegger

Visual Signatures: Trade Dress Law for Brand Protection

March 26, 2024

Trade dress serves as the visual signature of a brand, encompassing everything from product and packaging designs to color schemes and overall presentation. In essence, it's the unique "look and feel" that sets a product or service apart in the eyes of consumers. This distinctiveness can play a pivotal role in brand recognition and customer loyalty, as consumers often associate specific visual elements with their preferred brands. Trade dress protection can be a key element for companies looking to safeguard their identity and prevent competitors from capitalizing on their established image. Through trademark law, businesses can secure exclusive rights to their trade dress, ensuring that their brand remains distinctive and recognizable amidst a crowded marketplace, ultimately fostering trust and loyalty among consumers.

There are three key concepts within trade dress law: non-functionality, source identifying, and likelihood of confusion. Since trade dress is focused on the look and feel of a product or service, the elements of the trade dress need to be primarily non-functional in nature. Additionally, the trade dress needs to create a connection in the consumer's mind between the product or service and the provider of the product or service. Some trade dress is inherently distinctive such that it can automatically create that connection. In other cases, such as when the trade dress is part of a product design, the trade dress needs to be used in a way and until the association is created in the consumer's mind (this type of association is referred to as "secondary meaning"). Determining whether trade dress is infringed involves an evaluation of whether consumers are likely to confuse the trade dress of one product or service with that of another. This involves evaluating factors such as the similarity of the trade dresses, the similarity of the products or services, and the degree of care exercised by consumers in making purchasing decisions.