

POWERLINE

News of the California Sign Association & Sign Users Council of California

September 2005

Trademark Basics

By Jeff Aran, Esq., CSA General Counsel

Sign fabricators are often faced with design dilemmas that may implicate trademark infringement. Understanding your rights—and the rights of others—is important when creating a new logo or other sign design.

What is a Trademark?

A trademark is words, designs, symbols or other indicia that identify the source of goods or services in the marketplace. Trademarks can be suggestive, descriptive, fanciful or arbitrary.



Fanciful or arbitrary marks are entitled to the highest level of protection. Examples include

invented words, such as Kleenex, Google or Pentium, created to identify a company's products or services. Arbitrary marks are real words that have nothing to do with the product or service, e.g., Apple, Big 5, Shell or Target.

Suggestive marks hint or suggest something about the product without actually describing its characteristics. The consumer has to fill in the gap to associate the mark with the product, e.g., Nike or Champion for sporting goods.

Descriptive marks generally describe a characteristic of the goods or services and can be protected only if through substantial use in the marketplace they signify or come to be associated with the retailer or producer—but not the product or service—e.g., Holiday Inn for hotels, Chap Stick for lip balm.

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Western Sign Show

Clear Your Calendar. The Western Sign Show Is Coming to San Diego in February!

By Chuck Jones

Come to the western states' largest and best signage tradeshow in February when the Western Sign Show comes to San Diego!

Warm and sunny San Diego has some of the most desired real estate in the world. And for three days in February, the sign industry will inhabit a piece of it when it becomes home to the Western Sign Show. Taking a cue from the breathtaking California sunsets, the theme of the show will be: Signs on the Western Horizon.

ISA, in collaboration with the Western States Sign Council, is producing the Western Sign Show, to be held February 6-8 in beautiful San Diego. This exciting event will feature more than 100 exhibit booths, displaying the latest in products and the most advanced technologies developed for the sign industry. Plus, attendees will have the chance to take advantage of invaluable educational opportunities, including special presentations from ISA's Discovery Seminar Series.

One of the biggest attractions at the Western Sign Show will undoubtedly be the exhibit hall, where dozens of sign companies and suppliers will show you the newest, the fastest, and the best products and services in the sign industry. It's a quick-and-smart education to see who is offering what. The exhibit hall is your place to get current information so that you can make the best business decisions.

There will also be select presentations from ISA's Discovery Seminar Series. These seminars are wonderful opportunities to see and hear prominent sign industry experts giving you useful insights into such topics as

manufacturing, safety, sign code, salesmanship, management, installation, and technique. For more information about the educational opportunities at the Western Sign Show, contact Patricia Hayden, ISA's education and professional development director, at (703) 836-6067, or at patricia.hayden@signs.org.

Details on show activities, housing, travel, and how to register to attend will be available soon at www.signs.org. In the meantime, mark your calendar to attend the Western Sign Show, February 6-8 in San Diego! ▼

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Loss Control Bulletin from State Fund: Reporting Work-Related Injuries

State Fund's Claims Reporting Center (1-888-222-3211), is available 24 hours a day, 7 days a week for policyholders to report injuries as soon as they occur. Agents will do the necessary paperwork to get the claim started and refer the injured worker to the designated physician or provider.

Within 8 hours of any serious injury or illness [(Title 8, CCR, Section 330(h)] (requiring hospitalization over 24 hours, other than for medical observation, or where there is permanent employee disfigurement), or death occurring in a place of employment or in connection with any employment, employers must report the incident immediately by telephone or telegraph to the Division of Occupational Safety and Health.

California Labor Code, Section 3550, requires that:

"Every employer shall post and keep posted in a conspicuous location frequented by employees and where it may be easily read by employees during the hours of the workday, a notice

which shall state name of the current compensation insurance carrier..."

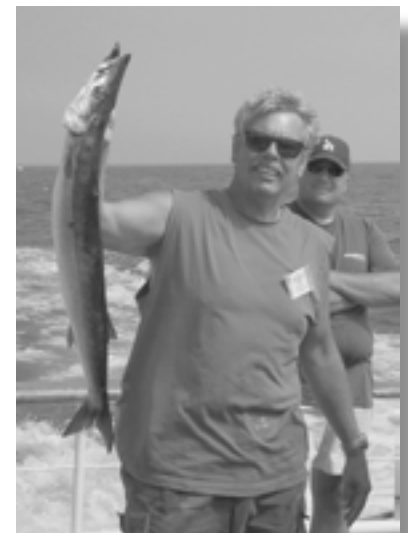
The notice must also contain information regarding employee rights and responsibilities and "...posted in both English and Spanish where there are Spanish-speaking employees."

Additionally this California law requires employers to provide a form on which employees may indicate the name of their personal physician or personal chiropractor. The form must be provided to new hires either at the time the employee is hired or by the end of the first pay period. This form is available from your State Fund representative at no cost. If you would like free copies, in English or Spanish, of the required posting notice, the brochure explaining an employee's workers' compensation rights or the physician predestination form, call State Fund's toll-free Customer Service number at 1-877-405-4545. ▼

Did You Miss the Boat?

The CSA annual fishing trip took place on July 30th. We had 46 fishermen, women, and kids on board at 5:00 am. Fishing began at 7:00 am and continued until 3:00 pm. The weather could not have been better and the ocean was calm. In other words, nobody got sick. We had a fair bite going on with Bass until the red tide engulfed us. We moved to another location and began catching Barracuda. It was here that yours truly caught the big fish that eventually won the jackpot. My sympathy goes out to Mike who wants to remain anonymous; during one our bites while the adrenaline was flowing he got bumped and lost his very expensive pole in the water. Sorry, Mike. Thanks to all for coming. For those who didn't, don't miss the boat next year.

Thank you,
Gary Quiel





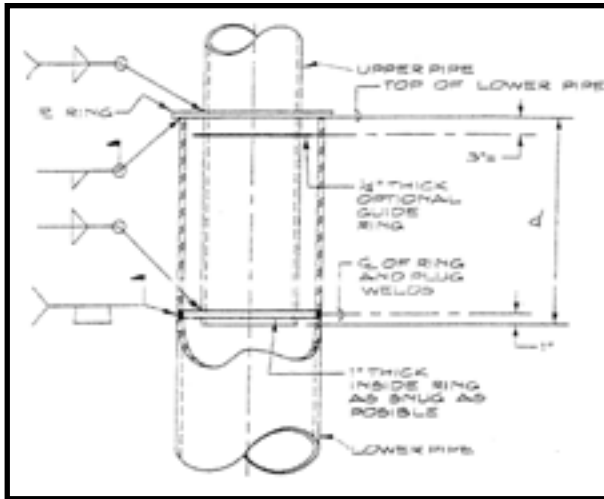
Williams Sign Co. Donation to CSA

Have you seen this sign? It will direct you to CSA functions thanks to Williams Sign Company! "There is a series of generic directional signs that we are now using" states Executive Director Connie Seitz. "Thanks to Sharon Willison and Williams Sign Company, we have a consistent look that people now recognize when attending Dinner Meetings, Special Events, and even the Annual Convention." The signs are light weight and easy to pack, so expect to see them at every function! ▼

Sign Failures

By Dub Northcutt

CSA members should be aware that the ISA Technical Committee is now looking into the causes of the sign failures that happen at the pylon splice. The failure occurs at the top of the weld which is located at the top plate ring. The committee is making decisions about pipe and plate sizes and strength, weld types and conditions, and steel pre-heating. Structural testing is being advised by structural steel welding experts at UCSD, along with the engineers who participate at the ISA committee. Everyone should stay in touch with this particular issue and provide comments and any data that can influence this project. ▼



Engineering Sign Structures: An Introduction to Analysis and Design by Benjamin Jones. Published 1998, Page 124

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Trademark Basics

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Generic terms, which describe the general category to which the product or service belong, such as Shoes, are not protected as marks.

What is Trademark Infringement?

Trademarks infringement exists when there is a likelihood of confusion among consumers through the use of a word, symbol or design that is the same as or similar to another's trademark. Courts examine several factors in reaching a determination of confusion, including: similarity of marks, goods or services, customers, trade channels, actual confusion and intent.

Trademark infringement can also occur with "trade dress," which is the overall image look and appearance a business employs. For example, Taco Bell has a unique Mexican mission

style restaurant; a competitor copying the look of a Taco Bell, calling itself Taco Grande, might be found to be infringing because there's a likelihood of confusion among consumers.

Trademarks Protected from Government Interference

Federal law [the Lanham Act, 15 USC §1121(b)], provides that no state, city or county may require alteration or modification of a registered trademark, service mark, trade name or corporate name. California law provides similar protections as well. Trademarks or logomarks, including the colors which comprise them, are property rights. If a protected mark is required to be altered in order to obtain a sign permit, the mark's value is diluted and the business' identity in the market is diminished. A trademark that identifies a successful business represents considerable value and con-

stitutes a property right.

In California, a Federal Court ruled that the City of South Lake Tahoe's insistence that Motel 6 alter its logo to use a different shade of blue constituted trademark infringement. The City was required to pay damages and attorney fees. The Ninth Circuit Court of Appeals has also ruled that the City of Tempe's (AZ) effort to compel Blockbuster Videos to change its torn-ticket logo and colors violated the Lanham Act.

The Lanham Act may be helpful for rebranding projects when, in order to comply with the sign ordinance, the business new logo won't fit properly or look right within an existing sign footprint, cabinet, or pylon sign display. It could be argued that in order to comply, the city is forcing the business to alter its trademark in violation of the law. ▼



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