

Dude, Where's My Sign?!

by Jeff Aran, Esq., CSA Legal Counsel

Time and again, we hear of cities that refuse to allow a simple face change on grounds that any alteration to an existing sign requires conformance with the current code. The "alteration" can be as minor as a fresh look for an existing tenant or just a new owner of the business. Conformance usually translates into a smaller, monument sign with poor visibility. Many sign companies doing site rebranding find this to be a regular occurrence, particularly with recent bank mergers leading to sign face change-outs.

If you need to keep that pole or other sign, what can you do about it? How do you fight the bureaucracy? Here are four strategies that may be helpful.

1. Business & Professions Code Section 5499 (a CSA sponsored law) provides that when there are special topographic circumstances which, upon compliance with the ordinance, would result in a material loss of visibility of an on-premise sign, the sign may remain and is deemed conforming as a matter of law. So, for example, in a city banning pole signs, if your customer is required to remove its existing 40' pole sign and install a conforming 8' monument, it will likely suffer a loss of visibility to the motoring public and probably create a traffic hazard, as well as be subject to vandalism and graffiti. Section 5499 would operate to prevent the city from requiring conformance if you can show the topographic circumstances, which include man-made features of the streetscape (i.e., trees, buildings, medians, freeway), prevent the 8' sign from being reasonably seen. We have successfully argued 5499 in many circumstances. It requires a bit of work and you may have to first exhaust the city's administrative review remedies, but it's a fight worth fighting. Section 5499 provides:

5499. *Regardless of any other provision of this chapter or other law, no city or county shall require the removal of any on-premises advertising display on the basis of its height or size by requiring conformance with any ordinance or regulation introduced or adopted on or after March 12, 1983, if special topographic circumstances would result in a material impairment of visibility of the display or the owner's or user's ability to adequately and effectively continue to communicate with the public through the use of the display. Under these circumstances, the owner or user may maintain the advertising display at the business premises and at a location necessary for continued public visibility at the height or size at which the display was previously erected and, in doing so, the owner or user is in conformance.*

2. Lanham Act. The Lanham is the Federal Trademark protection law. Section 1121(b) provides that no city can require alteration of a federally registered mark. In the signage context, when a city imposes color restrictions or requires conformance upon a change of name, logo or ownership, it can be argued that the city is in effect unlawfully compelling alteration of the registered mark, i.e., the sign. Some cities illogically claim the business can leave up the old message, trademark or name without suffering compliance, but that's an inane argument, of course, because the new name or logo is required. Recently, in Glendale, CA the city contended an existing bank pole sign could remain without having to conform—but only if the old bank name was left in place or the it displayed no message, i.e., a blank face! Arguably, the Lanham Act might apply because in effect the city was dictating that the new bank had to use the old bank's name (an "alteration" of a protected mark). We have successfully argued the Lanham Act over the years and it has been the subject of court decisions. In an Arizona case before the 9th Circuit, Blockbuster's "torn ticket" logo, and, in California, Motel 6's registered colors, were found to be protected. The Lanham Act, 15 USC Sec. 1121(b) provides, in pertinent part:

(b) *No State or other jurisdiction of the United States or any political subdivision or any agency thereof may require alteration of a registered mark, or require that additional trademarks, service marks, trade names, or corporate names that may be associated with or incorporated into the registered mark be displayed in the mark in a manner differing from the display of such additional trademarks, service marks, trade names, or corporate names contemplated by the registered mark as exhibited in the certificate of registration issued by the United States Patent and Trademark Office.*

3. Regulatory protection. Speaking of banks, federal regulations generally require that the bank name be correctly displayed. State laws also require gas stations to prominently show pricing and fuel info. Some subjects, like real estate for sale, have special protections. These laws are often useful in convincing local officials that conformance with local codes is pre-empted.

4. Get a Good Sign Lawyer. While it's not always necessary, hate to say it (well, maybe not), but sometimes just having an attorney in your quiver is useful. More and more, cities and planning staff just don't respond. When you bring in your attorney, particularly one who knows sign ordinances, the city knows you're serious and that often is sufficient to get the right parties to the table to resolve concerns.

Let's hear your ideas for fighting city hall. We'll follow-up in a future issue of *Signage Matters*. Send them to Jeff Aran at jeff@calsign.org.