

UiT

THE ARCTIC
UNIVERSITY
OF NORWAY

Protection of Indigenous Cultural Expressions through Existing Intellectual Property Law

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Trademark Basics

Indication of Origin

Varemerkeloven §2

- Et varemerke kan bestå av alle slags tegn som er egnet til å skille en virksomhets varer eller tjenester fra andres, for eksempel ord or ordforbindelser, herunder salgord, navn, bokstaver, tall, figurer og avbildninger, eller en vares form, utstyr eller emballasje.
- A trademark can consist of all types of marks that are suitable to differentiate one enterprise's goods or services from another's, for example words, or combinations of words, slogans, names, letters, numbers, designs, pictures, or the goods form, furnishings or packaging.

Trademark Basics

15 USC § 1127

- The term “trademark” includes any word, name, symbol, or device, or any combination thereof –

...

to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.

15 USC §1052

No trademark by which the goods of the applicant may be distinguished from the goods of other shall be refused registration on the principal register on account of its nature unless it – (*various restrictions, including personal names, flags, coats of arms, immoral*

Traditional Trademark



Geographical Identifiers

A sign used on goods that have a specific geographical origin and possess qualities, a reputation or characteristic that are essentially attributable to that place of origin.

Geographical Identifiers



Certification Marks

owned by one party who certifies the goods and services of others when they meet certain standards. The owner of the mark exercises control over the use of the mark; however, because the sole purpose of a certification mark is to indicate that certain standards have been met, use of the mark is by others.

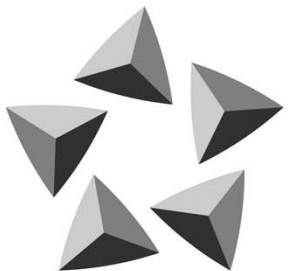
Certification Marks



Collective Marks

A collective mark may be owned by an association which itself does not use the collective mark but whose members may use the collective mark; the members may use the collective mark if they comply with the requirements fixed in the regulations concerning the use of the collective mark. An enterprise entitled to use the collective mark may in addition also use its own trademark.

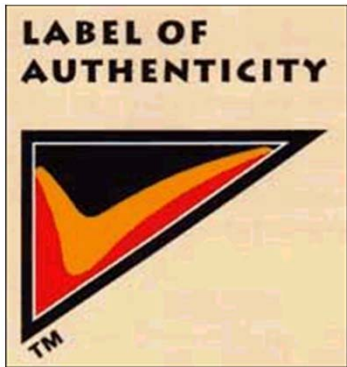
Collective Marks



STAR ALLIANCE™



Indigenous Certification / Collective Marks



Indigenous Certification / Collective Marks

25 USC § 305a(g)(1) *Powers of the Board*

- ...to create for the Board, or for an individual Indian or Indian tribe or Indian arts and crafts organization, trademarks of genuineness and quality for Indian product and products of an individual Indian or particular Indian arts and crafts organization.

IGIs, Certification, and Collective Marks

Geographical Identifiers

- Protects the '*where*'

















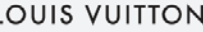




Certification Marks

- Protects the '*how*'

Collective Marks

- Protects the '*by whom*'

Value of a Trademark (Brand)

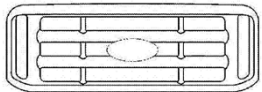
01  Apple +34% 98,316 \$m	02  Google +34% 93,291 \$m	03  Coca-Cola +2% 79,213 \$m	04  IBM +4% 78,808 \$m	05  Microsoft +3% 59,546 \$m	06  GE +7% 46,947 \$m	07  McDonald's +5% 41,992 \$m
08  Samsung +3% 39,610 \$m	09  Intel -5% 37,257 \$m	10  TOYOTA +17% 35,346 \$m	11  Mercedes-Benz +6% 31,904 \$m	12  BMW +10% 31,839 \$m	13  CISCO +7% 29,053 \$m	14  Disney +3% 28,147 \$m
15  HP +1% 25,843 \$m	16  Gillette +1% 25,105 \$m	17  LOUIS VUITTON +6% 24,893 \$m	18  ORACLE +9% 24,088 \$m	19  amazon +27% 23,620 \$m	20  HONDA +7% 18,490 \$m	21  H&M +10% 18,168 \$m

Traditional Trademarks

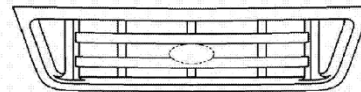


Ford Trademarks

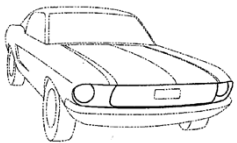
TRADEMARK
PRINCIPAL REGISTER



TRADEMARK
PRINCIPAL REGISTER



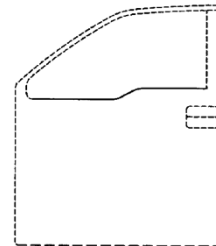
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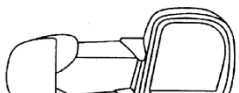
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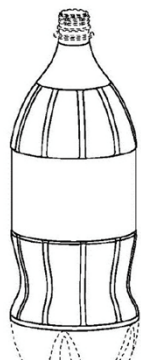
TRADEMARK
PRINCIPAL REGISTER



Coca-Cola Trademarks

Coca-Cola

United States Patent and Trademark Office



Toblerone Trademarks



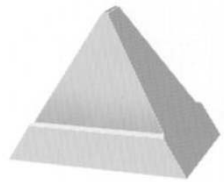
TRADEMARK
PRINCIPAL REGISTER

Application filed July 25, 1925. Serial No. 217,845.

TOBLERONE



540 Mark



540 Mark



Kautokeino Sami Kofte



Hypothetical Example



Hypothetical Example (con't)



A Few Problems

Ownership of a Mark

Decision Making Power

Rights of Owners

Additionally Considerations

Use in Commerce Requirements

Registration Requirements

Evidentiary Issues

Competing Registered Marks

Marks with Religious or Sacred Importance

Undisclosable Marks

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Article 4 (1)

- Special measures shall be adopted as appropriate for safeguarding the persons, institutions, **property**, labour, **cultures** and environments of the peoples concerned.

Article 23

- Handicrafts, rural and community-based industries ... shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these people and whenever appropriate, ensure that these activities are strengthened and promoted.

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