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Anne Burnett, J.D., M.L.I.S.

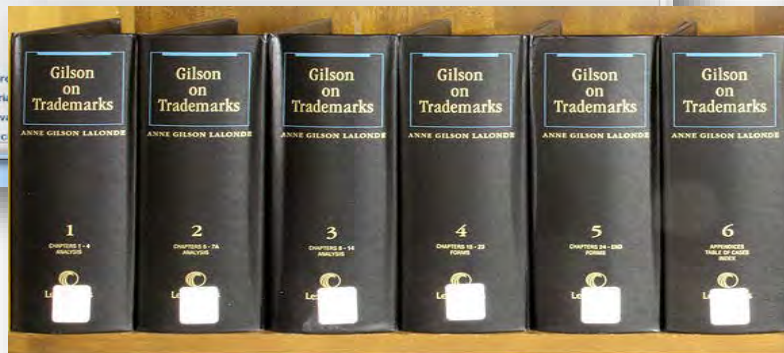
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§ 7:32

McCARTHY ON TRADEMARKS

of a trademark design covering a product is generally determined by comparing the overall commercial impression of the conflicting designs.¹⁵

§ 7:33 Geometric shapes

Ordinary geometric shapes such as circles, ovals, squares, etc., even when not used as a background for other marks, are regarded as nondistinctive and protectable only upon proof of secondary meaning.¹ "A circle or a ball as a trademark is publici juris where it has not acquired a secondary meaning."² A series of three dimensional cubes molded into the surface of glassware was rejected as a trademark, on the ground that on such a product the design was mere surface ornamentation, devoid of trademark significance to buyers.³

However, uncommon or unusual shapes and symbols that contain some minimum amount of inventiveness or fancifulness can be regarded as inherently distinctive and protected as such, without the need for proof of secondary meaning.⁴ The issue is whether this shape is so unusual for this type of

materials, or on shopping bags.⁵)

¹FORT JAMES OPERATING COMPANY v. ROYAL PAPER CONVERTING, INC., 83 U.S.P.Q.2d 1624, 2007 WL 1676779 (T.T.A.B. 2007) (A registration of an interlocking circle and square design imprinted onto paper towels was relied on to successfully oppose the registration of a similar design for paper products. "[I]n the case of design marks, the question of likelihood of confusion must be decided on the basis of the visual similarity of the marks. . . . [T]his is a subjective determination and must take into account the overall commercial impressions created by the marks rather than any detailed analysis thereof.")

[Section 7:33]

¹See cases cited in § 7:29.

²Mishawaka Rubber & Woolen Mfg. Co. v. S. S. Kresge Co., 119 F.2d 316, 49 U.S.P.Q. 419 (6th Cir. 1941), rev'd on other grounds, 316 U.S. 203, 86 L. Ed. 1381, 62 S. Ct. 1022, 53 U.S.P.Q. 323 (1942), reh'g denied, 316 U.S. 712, 86 L. Ed. 1777, 62 S. Ct. 1287 (1942).

³In re Fostoria Glass Co., 147 U.S.P.Q. 76 (T.T.A.B. 1965).

⁴In re Dairy Queen of Georgia, Inc., 134 U.S.P.Q. 136 (T.T.A.B. 1962) (star-shaped figure with representation of face held distinctive). See Brunswick-Balke-Collender Co. v. American Bowling & Billiard Corp., 150 F.2d 69, 65 U.S.P.Q. 148 (2d Cir. 1945), cert. denied, 326 U.S. 757, 90 L. Ed. 455, 66 S. Ct. 99, 67 U.S.P.Q. 359 (1945) (red crown on neck of bowling pin); O. & W. Thum Co. v. Dickinson, 245 F. 609 (6th Cir. 1917), cert. denied, 246 U.S. 664, 62 L. Ed. 928, 38 S. Ct. 334 (1918) (involved geometric figure protected).

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USPTO Manuals

Manual of PATENT EXAMINING PROCEDURE

Original Ninth Edition, March 2014

Latest Revision November 2015

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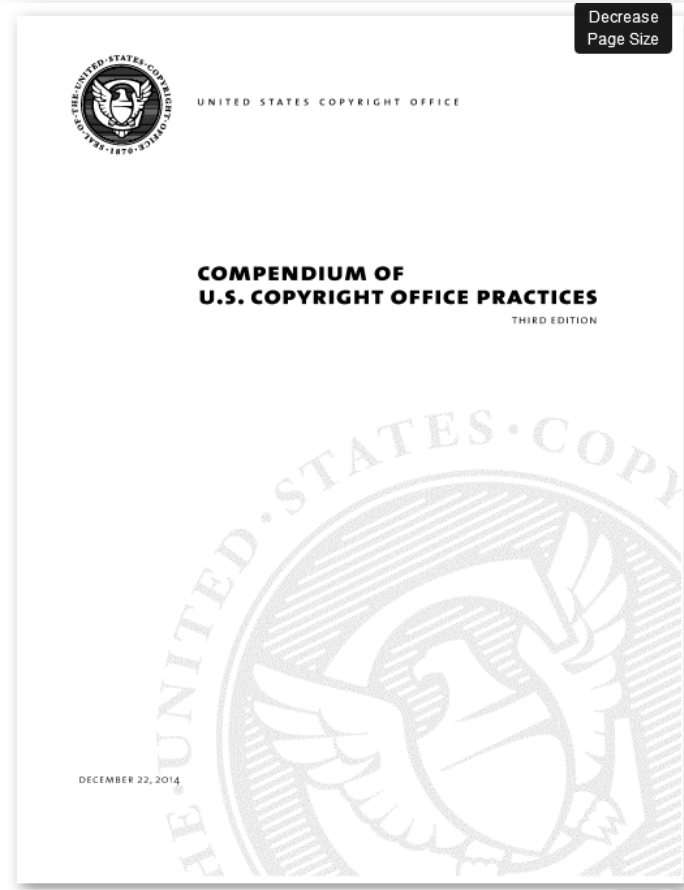
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Effective Date of the *Third Edition*

The *Compendium, Third Edition* was released and became effective on December 22, 2014.

The *Compendium, Third Edition* is a living, electronic document accessible on the official website of the U.S. Copyright Office. The Office publishes regular revisions, as appropriate, to reflect changes in the law and/or practices, which customers may access, download, or print. The version posted on the Office's website at any given time should be consulted as the current official version. The Office maintains an archive of all revisions so released, as well as prior versions.

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The full title of this manual is the "*Compendium of U.S. Copyright Office Practices, Third Edition*." The full title may be abbreviated as the "*Compendium*." The manual may be cited as follows:

Full citation:

- U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 101 [3d ed. 2014].

Short form citation:

- COMPENDIUM (THIRD) § 101.1(A).

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The *Compendium* documents and explains the many technical requirements, regulations, and legal interpretations of the U.S. Copyright Office with a primary focus on the registration of copyright claims, documentation of copyright ownership, and recordation of copyright documents, including assignments and licenses. It describes the wide range of services that the Office provides for searching, accessing, and retrieving information located in its extensive collection of copyright records and the



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New York : Fairchild Books, 2014

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The little book of fashion law / Ursula Furi-Perry
 Furi-Perry, Ursula, 1980-
 Chicago, Illinois : American Bar Association, 2013

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Fashion law and business [electronic resource] : brands & retailers / Lois F. Herzeca, Howard S. Hog

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Fashion law : a guide for designers, fashion executives, and attorneys

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 Descript. xviii, 388 pages : illustrations ; 23 cm
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Fashion merchandising -- Law and legislation -- United States
Clothing trade -- Law and legislation -- United States
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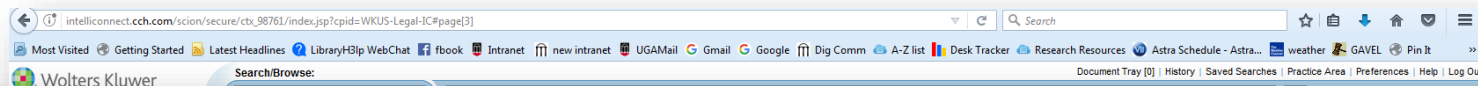
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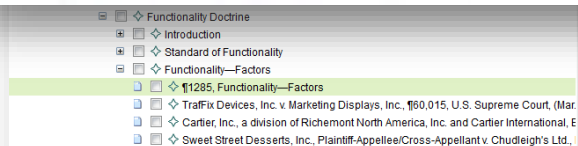
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A claimant may also argue that the absence of similar designs in the market shows that the design is not functional. In *In re Caterpillar, Inc.*, 43 U.S.P.Q.2d 1335, 1339-40 (TTAB 1997), the Board rejected an argument that the fact no other firms in an industry were using the applicant's formerly patented tractor design showed that the design was not superior. The Board noted the lack of use could be explained by the facts that the utility patent only recently expired, manufacturing heavy equipment requires a long period of research and development, and the applicant continued to assert exclusive rights in the design under the trademark law, so that competitors may not wish to become involved in a dispute over the use of the design.

Advertising. Advertising promoting the utility of a design or sensory mark tends to show it is functional. See, e.g., *American Greetings Corp. v. Dan-Dee Imports, Inc.*, 807 F.2d 1136, 1142-43 (3d Cir. 1986). The TTAB, however, has accepted some claims that such advertising is "mere puffery" or "laudatory," and insufficient to show a mark is functional. In *In re Weber-Stephens Products Co.*, 3 U.S.P.Q.2d 1659, 1665 (TTAB 1987), the Board found the shape of applicant's outdoor charcoal grill was not functional despite the fact that applicant's promotional literature touted the utilitarian advantages of the shape because there was no empirical evidence that other shapes of covered grills would not function as well as applicant's product. Similarly laudatory advertising has also been excused where there has been distinct

IP is global...





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The TRIPS Agreement is Annex 1C of the [Marrakesh Agreement Establishing the World Trade Organization](#), signed in Marrakesh, Morocco on 15 April 1994.


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ROMARIN			Technical Resources		Publications		
Global Design Database			International Classifications		Country Profiles		
Hague Express			Standards (WIPO Handbook)		Case Studies		
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- Members' Profiles
- Treaty Secretariat
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IP Legislation

Treaties

Full Text Search

WIPO/WTO/UN Members

Select a Member

- Afghanistan (22)
- Albania (39)
- Algeria (41)
- Andorra (17)
- Angola (23)

Subject Matter

Patents (Inventions)

Select a Topic

- Alternative Dispute Resolution (ADR)
- Competition
- Copyright and Related Rights (Neighboring Rights)
- Domain Names
- Enforcement of IP and Related Laws
- Genetic Resources
- Geographical Indications
- Industrial Designs
- Industrial Property
- IP Regulatory Body
- Layout Designs of Integrated Circuits
- Patents (Inventions)
- Plant Variety Protection
- Trade Names
- Trademarks
- Traditional Cultural Expressions
- Traditional Knowledge (TK)
- Transfer of Technology
- Undisclosed Information (Trade Secrets)

News on IP Laws

December 1, 2015 **Poland: The Act of July 24, 2015 on the Enforcement of Intellectual Property Rights** enters into force on December 1, 2015. The Act introduces significant changes to the Polish intellectual property law with European regulations in mind. It provides patent protection for medicinal products and extends the application of a sequence or a partial sequence of a gene in the patent application for biotechnological inventions; and (iii) extends

Query:

Argentina

Plant Variety Protection

10 record(s) found.

IP-related Laws: enacted by the Legislature

Date of Text	Entity	Title
March 30, 1973	Argentina	Law No. 20.247 of March

Implementing Rules/Regulations

Date of Text	Entity	Title
February 28, 1996	Argentina	INASE Resolution No. 35/
July 24, 1992	Argentina	Resolution No. 631/92 of Registering Varieties in t
October 21, 1991	Argentina	Decree No. 2.183 of Octo

Treaty Approvals

Date of Text	Entity	Title
September 21, 1994	Argentina	Law No. 24.376 of Septen Plants (1978 Act of the U

WIPO-Administered Treaties

Entry into force for contracting party	Entity	Title
October 8, 1980	Argentina	WIPO Convention

IP/N/1/ARG/P/5

Página 2

DECRETO N° 2183/91 REGLAMENTARIO DE LA LEY DE SEMILLAS Y CREACIONES FITOGENÉTICAS N° 20247

BUENOS AIRES, 21 de Octubre de 1991

Visto el expediente 1560/91, del registro de la SECRETARIA DE AGRICULTURA, GANADERIA Y PESCA, el cual la COMISION NACIONAL DE SEMILLAS propone la derogación del Decreto N° 50 del 17 de enero de 1989, reglamentario de la Ley 20.247 y el dictado de un nuevo instrumento legal en su reemplazo, y

CONSIDERANDO:

Que el artículo 34 del Decreto 2476 del 26 de noviembre de 1990 establece la necesidad de reorganizar y fortalecer la funciones de control vegetal de la producción agrícola nacional, en especial la destinada a mercados externos

Que dicha norma prevé, además, la creación de un organismo especializado para tal fin, lo que posibilitará una más eficiente aplicación de la Ley 20.247 y obtener una mayor participación en el mercado internacional de semillas.

Que, asimismo, la creación de un organismo como el descripto, requiere que su accionar se vea enmarcado en una reglamentación apropiada al fin perseguido

Que dicha reglamentación debe adecuarse a los acuerdos y normas internacionales que aseguren un efectivo resguardo de la propiedad intelectual, para brindar la seguridad jurídica necesaria para el incremento de las inversiones en el área de semillas.

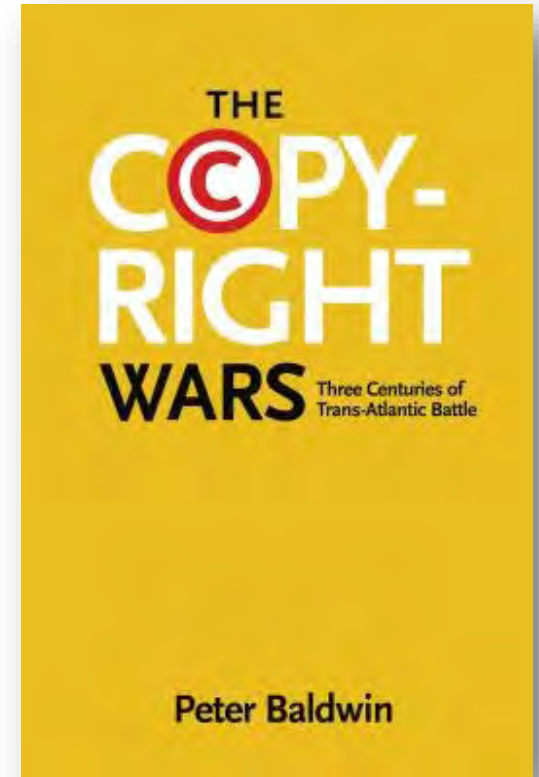
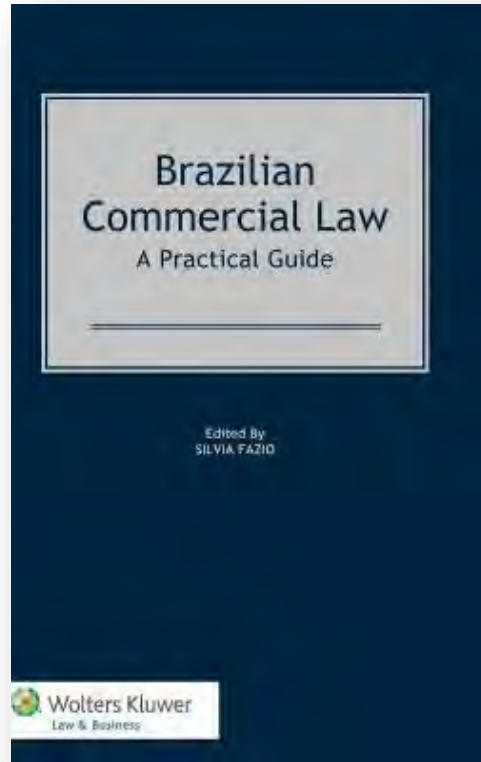
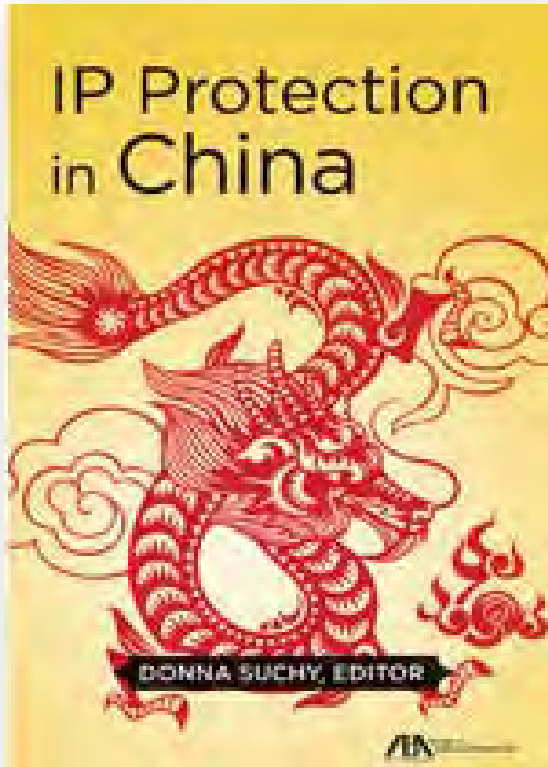
Que tal adecuación redundará en mayores alicientes para la obtención y comercialización de nuevas variedades de simiente, garantizando a los agricultores un insumo básico de alta calidad para la producción agrícola, en conjunción a reglas transparentes para el desarrollo del mercado de semillas nacional.

Que la nueva reglamentación incorpora la experiencia acumulada desde la entrada en vigencia de la Ley 20 247 y un vocabulario acorde con el avance tecnológico nacional e internacional en la materia.

Que las facultades para dictar el presente acto surgen del artículo 86, inciso 2) de la Constitución Nacional

Por ello,

Jurisdiction-specific



Current Awareness

The image shows a screenshot of the Bloomberg BNA World Intellectual Property Report website and an email interface. The website header includes the Bloomberg LAW logo, navigation links for Home, Search & Browse, and Practice Centers, and a search bar. The main content area is titled "Patent, Trademark & Copyright" and features a "LATEST ISSUE" section with a link to "PTD Issue No. 34 (2017) - Wednesday February 22, 2017". Below this, there are several article teasers with images: "Dozens of Banks Sued Doesn't Make Patent Financial Institutions Vulnerable to Special Proceeding" (with a "MOBILE BANKING" image), "Qualcomm Says Samsung Scandal Weakens Korea Another Way to Challenge a Biotech Profitable Business" (with a smartphone image), and "Boston Scientific Stuck With \$366M Medical Device Licensing" (with a medical device image). The website also has sidebars for "Recent Topics", "Key Features", "Countries", and "Industries".

The email interface on the right shows an email from "Bloomberg BNA <bloomberg@bna.com>" dated "Feb. 01 -- World Intellectual Property Report" to "Anne E Burnett". The email content is titled "Around the World" and lists several international news items under various categories:

- Copyrights/Fair Use:** Canadian Court Hits Litigious Publisher With Extra Costs. A Canadian court has awarded extra costs against an online news publisher for repeatedly suing federal agencies for copyright infringement in situations covered by fair dealing rights (Blacklock's Reporter v. Canada, Can. Fed. Ct., No. T-1391-14, 12/21/16).
- Copyrights/Infringement:** India Court Gives MySpace Breathing Room on Copyright. The social networking site MySpace isn't liable for posts that infringe copyright unless it has "actual knowledge" of the infringement and then fails to remove the posts, a Delhi High Court appeals bench held.
- Copyrights/Jurisdiction:** Alibaba-Owned Video Site Can't Be Sued in U.S. Court. Alibaba-owned Youku Tudou, Inc., which runs one of the most popular video streaming sites in China, can't be sued for copyright infringement in the U.S., a federal court ruled Jan. 24 (Triple Up Ltd. v. Youku Tudou Inc., 2017 BL 19299, D.D.C., No. Civil Action No. 16-159 (RDM), 1/24/17).
- Intellectual Property/Appointments:** U.K. Gets New IP Minister to Handle Post-Brexit Changes. U.K. Prime Minister Theresa May appointed a new intellectual property minister who will oversee plans to ratify and implement an agreement creating a patent court for most of Europe.
- Intellectual Property/Policy:** Trump IP Policy Should Focus on Patent Eligibility, IPO Says. The Trump administration's intellectual property policy should prioritize support for reversing the U.S. Supreme Court's restrictions on patent-eligible subject matter, the Intellectual Property Owners Association said Dec. 22.
- Intellectual Property/Trade:** U.S. Trade Office Seeks Public Feedback on IP Violators. The Office of the U.S. Trade Representative is seeking public feedback for its annual report on foreign countries with inadequate intellectual property rights, according to a Dec. 28 Federal Register notice.

Current Awareness: Blogs/Blawgs

The image displays three overlapping legal blogs. The top-left blog is SheppardMullin, featuring a blue header with the text 'INTELLECTUAL PROPERTY LAW B' and 'Up-to-date Information on Intellectual Property Law'. The main article is titled 'Warren Distribution, Inc. v. Royal Purple, LLC – What's in a Name?' by Paul Bost and Nancy Ly, dated January 26, 2016. The article text states: 'In this matter, the Trademark Trial and Appeal Board dismissed an opposition without prejudice in this precedential opinion because the party that filed the opposition was different from the party that sought and obtained an extension of time to file the opposition.' Below the article are social media icons and a '0 COMMENTS' button. The bottom article is titled 'Extending the Patentable Life of 3D Printers: A Lesson From the Pharmaceutical Industry'. The top-right blog is IPWatchdog, featuring a cartoon dog logo and the text 'IPWatchdog®'. It has a navigation bar with 'Topics', 'Inventors', 'Tech', 'Events', 'Politics', and 'Jobs', and social media icons for Facebook, Twitter, LinkedIn, and Email. The main article is titled 'The PTAB has failed to solve the patent troll problem created by large operating companies' by Gene Quinn, posted 9 minutes ago. The article text states: 'The patent troll problem has always been a creation of large operating companies. They obtained dubious, highly questionable patents. These low quality patents were then sold to ...'. To the right of the article is a cartoon illustration of a green dinosaur holding a red envelope. The bottom-right blog is PLi Practising Law Institute, featuring a red puzzle piece logo with the text 'NDA'. The main article is titled 'Revisiting the Standard NDA After ZeniMax v. Oculus' and the text states: 'ZeniMax offers useful insights for enterprises seeking to maximize the benefits of NDAs while minimizing the time and effort needed to negotiate them. Most technology enterprises are...'



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Home > Trademarks > Trademarks for Your Body Parts

Trademarks for Your Body Parts

By Jennifer Kovalick on January 14, 2016
Posted in Trademarks

Does your Trademark Most trademarks register Some individuals are said to have a "trademark" style. As we start gear up for the month of the calendar year craziness" [sorry, NCAA rules prohibit use of trademarks] we have been thinking about the trademark style of basketball players.

NBA All-Star James Harden is first in the lineup with his infamous beard. He has touted his moniker FEAR THE BEARD. Here he is in his twitter profile picture.



James Harden
@JHarden13

Harden's beard has become so popular, it has its own twitter account.



James Harden's Beard
@HardenBeard

Although James Harden does not have a trademark registration for his beard (yet), his beard is featured on merchandising. He started growing the beard in college, basically out of laziness, but started noticing fans coming to games with fake beards. The beard has been with him through the Olympics and now to an MVP award from the National Basketball Players Association.

If you don't Fear the Beard, perhaps you will Fear the Brow. I know I do. Anthony Davis has a distinctive unibrow that many females invest heavily to avoid. He has obtained trademark registrations for the words FEAR THE BROW, RAISE THE BROW, and BROW DOWN, among others. His distinctive brow (singular) is shown below:



Career & Professional Resources Collection

