



## Mesmer & Deleault, PLLC

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Memorial Day

# “Tip of the Month”

## Slogans and Trademark Rights

Slogans can be powerful marketing tools. A few examples of registered trademarks are Coca-Cola’s “Taste the Feeling” (2016), Under Armour’s “It Comes From Below” (2017), and Greyhound’s “...and leave the driving to us” (1964). However, not every slogan can be protected as a trademark.

To be eligible for federal trademark protection, a slogan must meet the requirements applicable to other trademarks. A slogan must identify the source of goods or services and it must be sufficiently distinctive. If a slogan simply describes attributes of the goods or services, the slogan will be deemed “merely descriptive” and therefore lacking the requisite distinctiveness for trademark protection. Types of terms that have failed to be a source identifier include terms that are laudatory or merely informational.

Laudatory Terms. Phrases that attribute quality or excellence to goods or services may be rejected for being merely descriptive. For example, the USPTO (Patent and Trademark Office) refused registration of THE BEST BEER IN AMERICA because the phrase was highly laudatory and descriptive of beer, but not sufficiently distinctive to identify the source of the beer. Similarly, the USPTO refused registration of SUPER BUY as being merely descriptive for tobacco products. Laudatory slogans with terms such as “premier,” “best” and “ultimate” have raised similar problems with the registration of other marks.

Merely Informational. A slogan that merely provides information to the reader may also be fatal to registration. Examples of informational slogans include DRIVE SAFELY, THINK GREEN, and PROUDLY MADE IN USA. Rather than function as source indicators, these slogans were rejected for registration as being a common safety reminder, an environmental consciousness slogan, and a phrase that provides information, respectively.

Some descriptive slogans and/or marks may be registered on the USPTO’s Principal Register if the slogan or mark has been continuously used for at least five years in interstate commerce in association with goods or services. There’s a presumption that such a slogan or mark is recognized by the consuming public as a source indicator; in other words, the slogan or mark has “acquired distinctiveness.” For descriptive slogans and/or marks that have less than five years use, the slogans and/or marks may be registered on the Supplemental Register.

If you have questions about rights in a slogan for your business, please call the attorneys at Mesmer & Deleault today at 603-668-1971, or contact us by email at [mailbox@biz-patlaw.com](mailto:mailbox@biz-patlaw.com).

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