



multicolor marks on product packaging can be inherently distinctive

Alesha M. Dominique and Sofia Castillo
MSK Client Alert

April 23, 2020

On April 8th, the U.S. Court of Appeals for the Federal Circuit, in *In re Forney Industries, Inc.*, held that multicolor marks can be inherently distinctive when used on product packaging.

In 2014, Forney Industries ("Forney"), a company that manufactures tools and accessories for welding and machining, applied to register a multicolor mark for its packaging and labels consisting of a black banner immediately followed by the color yellow, progressively fading into red. The trademark examining attorney refused to register the multicolor mark after concluding it was not inherently distinctive, and required that Forney Industries submit "sufficient proof of acquired distinctiveness." The Trademark Trial and Appeal Board (TTAB) affirmed the refusal, and Forney appealed to the Federal Circuit.

[View Full Alert](#)

practice areas

entertainment & ip litigation
intellectual property
trademarks & brands