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Trademarks

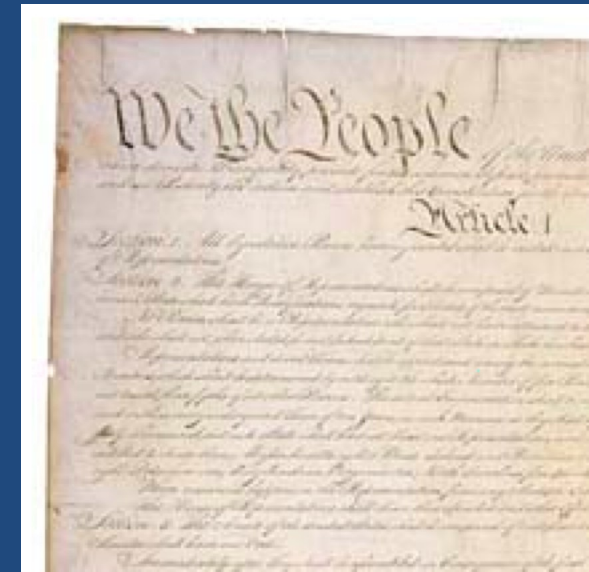
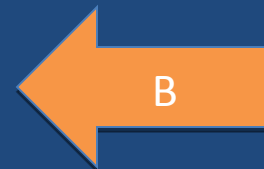
- This portion of the class sponsored by.....



Trademark Trivia

Q) From where in the U.S. Constitution does the Trademark Act derive?

- a) The Progress Clause
- b) The Commerce Clause
- c) The First Amendment
- d) No where – it's state law



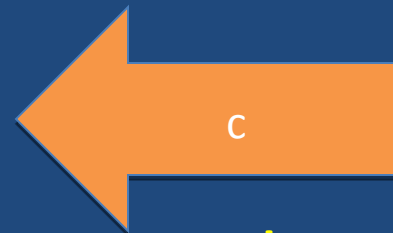
Q) What is the rationale for Trademark law?

a) Incentive for creation

b) Incentive for learning

c) Identify source of goods

d) Natural rights – if you come up with a phrase,
it should be yours



TM Rationale

- Identify source of goods and therefore create incentive for owners to invest in quality of goods
 - Protects interests of both owners and public

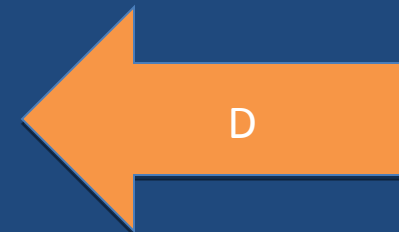
Q) Mary sells potatoes grown in Idaho. Which business name will give her stronger TM protection and why?

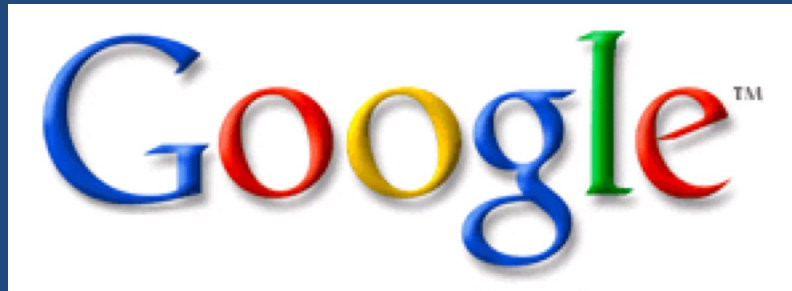
a) Mary's Idaho Potatoes because it is more accurate.

b) Mary's Idaho Potatoes because it is easier for customer's to remember.

c) Maidpotes because it is one word.

d) Maidpotes because it is more distinctive





Q) The 2006 editions of the Merriam-Webster dictionary and the Oxford English Dictionary include the term “google.” Were Google executives excited about this and why or why not?

A) No – inclusion in dictionary moves a brand name one step closer to becoming generic.

Q) Which of the following terms were once distinctive but have experienced “genericide”?

Cellophane



Escalator



Band-Aid

Kleenex

Chapstick

Aspirin



Q) Which of the following sports organizations first coined the phrase “March Madness” to describe an athletic tournament?

- a) Illinois High School Association
- b) NCAA
- c) U.S. Olympic Committee
- d) Big Ten Conference



TM Policing

- TM owners have an obligation to police their TM rights in order to protect the goodwill associated with their TM

TM Policing

'Got milk' lawyers huff at Talkeetna artist's parody

TRADEMARK: California milk processors own original and mean to keep it for themselves.

By ZAZ HOLLANDER
zhollander@adn.com

Published: July 25th, 2008 01:53 AM

Last Modified: July 25th, 2008 06:37 AM

WASILLA -- Got breast milk?

Story tools

- **Comments**
- E-mail a friend
- Print
- [View this](#)

If so, don't brag about it.

The California Milk Processor Board might put you on notice too.



[enlarge](#)

Photo courtesy of BARBARA HOLMES

Hand-lettered baby garb draws a rebuke and threats from milk processor attorneys, who claim the wording is too close to the original.

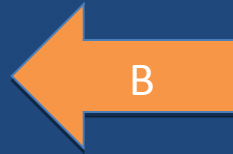
[More Mat-Su stories »](#)

Source: <http://www.adn.com/matsu/story/474936.html>

Q) Which category best describes the TM
“Jaguar”

a) Arbitrary or fanciful

b) Suggestive



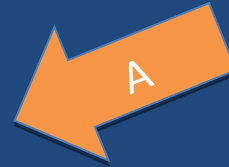
c) Descriptive

d) Generic



Q) Which category best describes the TM
“Starbucks”

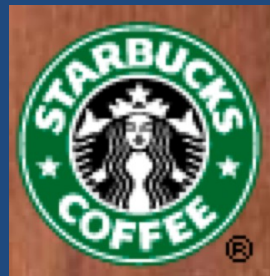
a) Arbitrary or fanciful



b) Suggestive

c) Descriptive

d) Generic



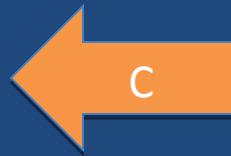
Q) Which category best describes the TM
“Windows”

a) Arbitrary or fanciful

b) Suggestive

c) Descriptive

d) Generic



Secondary Meaning

- A descriptive mark can become “distinctive” if it gains “secondary meaning”
- Mark has secondary meaning when consuming public primarily associates that mark with a particular product
- Courts look to several factors
 - Amount and manner of advertising
 - Volume of sales
 - Length and manner of the term’s use
 - Results of consumer surveys