

FedEx Color Scheme Trademark: Beyond Black and White

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Last month, Federal Express announced that all of its logos moving forward would use the brand's recognizable purple and orange color scheme. Before this change, each division of the company used different colors paired with the company's purple shade; over the next five years, the other secondary colors will be phased out in favor of orange. FedEx claimed the colors purple and orange in a number of trademark registrations – for example, in Registration No. 4619582, for the classic FedEx design mark:



On the surface, a registration that claims color as part of a stylized mark would appear to have a more limited scope of protection than a registration for a design shown in black and white; in the U.S., black and white logo registrations cover all color variations of a mark, although that practice is not consistent in other countries. However, a registration claiming color can be an important enforcement tool for companies, particularly if the color scheme is important to the brand identity. For example, if another shipping company attempted to register a mark using FedEx's purple and orange color scheme, FedEx's registration claiming color would provide a better basis for challenging such use and registration than a greyscale registration. FedEx's plan to use a consistent color scheme should also increase consumers' association of FedEx's offerings as a whole with those colors. Strong rights in a particular color scheme may also allow a company to acquire secondary meaning in the colors themselves, apart from a stylized mark, which could provide the basis for registering the colors on the Principal Register as trade dress applied to the materials FedEx uses to perform its services, such as trucks, uniforms, and packaging.

In the U.S., it is usually advisable to first file for distinctive, stylized marks in black and white, without a color claim. After registering a black and white version of a mark, brand owners should next consider how a color scheme fits into their brand identity, and whether it also makes sense to stake a claim in colors. Market research suggests that consumers react more strongly to nontraditional trademarks, such as color marks, and that such marks can engender greater loyalty than traditional brand names alone. For that reason alone, perhaps it is time to think beyond black and white when it

comes to trademark protection!

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