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Thank you for reading the May 2023 issue of Sterne Kessler's Markt to Market® newsletter. This month, we discuss Taco Bell's attempt to cancel two TACO TUESDAY trademark registrations, and a precedential TTAB decision reaffirming the challenges of federally registering marks for drug paraphernalia. We also feature a Sterne Kessler client alert reviewing and analyzing the Supreme Court's decision in copyright case *The Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*.

Our [Trademark & Brand Protection practice](#) here at Sterne Kessler is devoted to guiding companies of all sizes in developing and maintaining strong brands around the world. There is always something new and exciting happening in our unique IP niche, and we bring you updates each month to help you keep on top of it all. Thanks for your readership. If there is something you would like us to cover, please don't hesitate to reach out to us and let us know!

Kind Regards,

Monica Riva Talley
Editor

In This Issue:

- > TACO TUESDAY
- Generic Term, Failure to Function, or BOTH
- > Watching the Pot™
- > US Supreme Court Refocuses the Test for Transformative Use

TACO TUESDAY – Generic Term, Failure to Function, or BOTH

By: [James "Jamie" P. Hanly](#)

Taco Bell's recent efforts to liberate the phrase "Taco Tuesday" presents an opportunity to review the distinctions between marks that are generic and those that fail to function as a trademark.

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Watching the Pot™

A LITTLE DAB CAN DO YA IN

By: [Lauriel F. Dalier](#)

In a precedential [decision](#) earlier this month, the Trademark Trial and Appeal Board upheld refusals to register two trademarks owned by National Concessions Group Inc. ("National") on the ground that the goods – essential oil dispenser sold empty for domestic use in Class 21 – comprise illegal drug paraphernalia under the Controlled Substances Act (CSA).

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US Supreme Court Refocuses the Test for Transformative Use

By: [Ivy Clarice Estoesta](#) and [William H. Milliken](#)

It has been nearly thirty years since the US Supreme Court has considered whether a creative work qualifies as a transformative use under the Copyright Act. The last time was in 1994, when the Court in *Campbell v. Acuff-Rose Music, Inc.* stated that the central inquiry of transformative use is "whether the new work merely supersede[s] the objects of the original creation, or instead adds something new, with a further purpose or different character, altering the first with new expression, meaning, or



message.”

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