

## Battle of the Oranges: U-Haul vs. Public Storage in a Trademark Showdown Over the Color Orange

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To be eligible for trademark registration, a color must have acquired distinctiveness and must not be functional. Recently, the Federal Circuit discussed the importance that a color mark not be functional. A new lawsuit filed by U-Haul against Public Storage will turn on whether non-exclusive use can ever be distinctive.

U-Haul International filed suit against Public Storage arguing for Public Storage's continued use of the color orange and the word "orange" in connection with its self-moving and storage business. The lawsuit arises from a cease-and-desist email sent by Public Storage, alleging that use of the color orange caused consumer confusion and infringed on Public Storage's trademark rights to the color orange.

In its complaint, U-Haul alleged that Public Storage is attempting to improperly monopolize the color orange and the term "orange" by fraudulently maintaining trademark registrations with the U.S. Patent and Trademark Office (USPTO). According to U-Haul, Public Storage falsely represented it had exclusive rights to these marks in its trademark applications, thereby excluding competitors such as U-Haul and hundreds of independent moving and storage businesses from using the color orange or related terms.

U-Haul alleges that it has been using the color orange in association with its moving and storage services since its founding in 1945, predating Public Storage's recent claims. U-Haul contends that Public Storage's assertion that the color orange has acquired distinctiveness for its services is baseless. In April 2024, U-Haul filed letters of protest with the USPTO, seeking the cancellation of Public Storage's trademark registrations for "ORANGE STORAGE," "ORANGE IS THE NEW SIZE," and "ORANGE DOOR STORAGE INSURANCE."

U-Haul also alleges Public Storage, in efforts to monopolize the use of color orange, has moved away from predominantly using the color purple in combination with color yellow and orange to solely using the color orange like U-Haul's branding. Through its lawsuit, U-Haul is asking the District Court of Arizona to declare that its use of the color orange and the term "orange" do not violate Public Storage's alleged trademark rights. U-Haul also seeks the cancellation of Public Storage's disputed trademarks.

In response to U-Haul's complaint, Public Storage filed a motion to dismiss for failure to state a claim and questioning the suit as a publicity stunt and an anticompetitive maneuver. Public Storage further asserts U-Haul created a website, which shows no affiliation with U-Haul, in order to produce evidence for the USPTO. Through its response, Public Storage reaffirms its intention not to intervene with U-Haul's use of the color orange in relation to its moving and storage services.

If you have any questions about the impact of these changes, please contact your Miller Canfield attorney or the authors of this alert.