

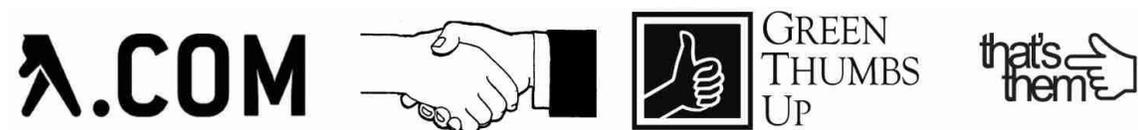
**TSA62 - Gesture Trademarks: Non-Traditional Mark Protection in the United States**  
**Saturday, May 20, from 1:15 pm – 3:15 pm**  
**Moderator: Mary B. Aversano, Aversano IP Law, United States**

**Introduction** – In the United States, a non-traditional trademark (NTM) is a mark other than the conventional word or 2D logo mark, and can be shown in many formats such as 3D, color, sound, motion and including gestures. A “gesture” as defined by the Merriam-Webster dictionary is “movement usually of the body or limbs that expresses or emphasizes an idea, sentiment, or attitude [e.g., he] raised his hand overhead in a gesture of triumph ...”

**I. Clearance of Gesture Marks**

**A. GESTURE MARKS ARE CATEGORIZED BY THE UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO) BY TWO DESIGN CODES FROM THE DESIGN SEARCH CODE MANUAL (DSCM)**

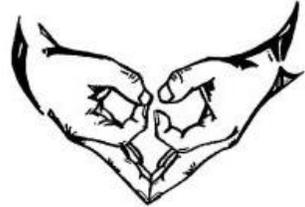
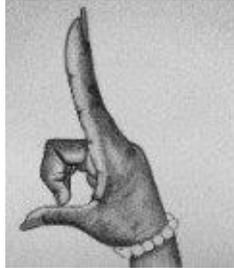
Marks containing gestures generally receive the design code 02.11.14 “Hands and fingers forming the following: handshake, finger pointing, fingers walking, OK sign, and thumbs up or thumbs down.” Examples are:



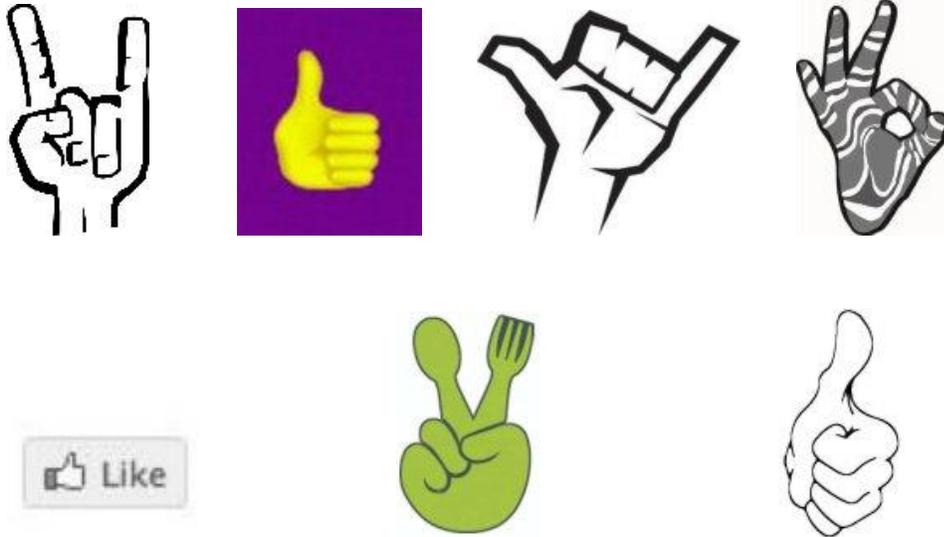
Gestures can also be categorized under design code 02.11.07 “Hands, fingers and arms” as follows:



The DSCM does not make a distinction between 2D or 3D gesture marks. A search by the above design codes will reveal marks containing gestures whether part of a 2D or 3D logo or standalone design. Currently, there are 18,558 marks assigned a gesture mark design code with 2,188 in the clothing category. Below are examples of standalone gesture marks for the clothing category:



**B. MARK DESCRIPTION MAY ALSO CONTAIN THE WORD, “GESTURE” OR “HAND”**



**C. “GESTURE” IN MARK DESCRIPTION BUT NOT CATEGORIZED AS A GESTURE:**



**DUK World Studio** “...and an arm making a V-sign hand gesture”



“bear is winking, sticking out its tongue, and making a thumbs up gesture with his hands”



“smiling round character displaying a thumbs up gesture ... ”



“bandit wearing a cowboy hat, having large, round speaker-shaped eyes, whose face is obscured by a bandana, and whose hands form a v-shaped peace gesture”

**D. ALSO CATEGORIZED AS 3D**



“three-dimensional configuration of a tap handle for beer that features a hand in a closed position with a raised index finger on top of a shirt cuff appearing above a hat and stacked geometric shapes with a pair of eyes with eyeglasses on a nose and a moustache”

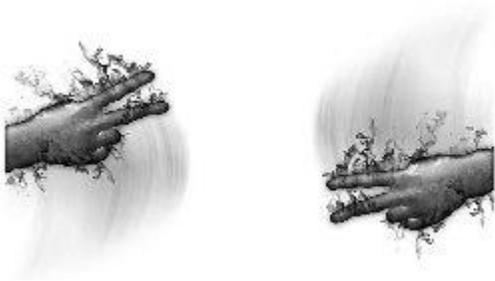


“three-dimensional words ‘Touch’ and ‘BIOS’ in two lines and the words ‘Hybrid EFI Technology’ under them, and a hand touch a point behind the word ‘BIOS’ to make a ripple-like image”



“three-dimensional rendering of a left-hand fist in a detailed etched or engraved style”

**E. ALSO CATEGORIZED AS “MOTION”**



“The mark consists of a left and right hand, with two fingers on each hand pointing inwards, with the illusion of motion, with both hands on fire”



“two hands depicted in a shaking motion within a heart”



“two hands, one closed and the other with finger tips apart, appear to the right of the wording, each with a band across the palm representing motion of band use”

**II. Prosecution of Gesture Marks is Consistent with Prosecution of Other Marks**



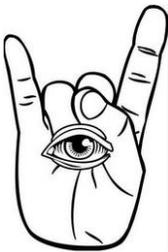
U.S. Application No. 86533102: “[t]he mark consists of a left hand with three fingers folded down, the index finger straight up and the thumb folded across the fold down fingers.” Filed by World Wrestling Entertainment for clothing. Application approved but no statement of use filed and application became abandoned.



U.S. Application No. 86553544: “[t]he mark consists of a left hand with two fingers folded down to touch the upward bent thumb, forming the shape of a mouth or lips.” Filed by World Wrestling Entertainment for clothing. Likelihood of confusion objection issued in view of a prior registration (Reg. No. 4535612) for:



described as, “the representation of a human hand with the index and small fingers extended upward and the thumb closed over the middle and ring fingers.” With potential objection by:



also for clothing and described as “a hand with the two middle fingers folded down and covered by thumb, and the pinkie and ring fingers extended with an eyeball positioned on a central portion thereof.” However, this application was abandoned in view of an objection by the Registrant above.

In view of the above, does the new application below for a “stylized hand making a gesture” for clothing have a chance?

