

## HOSPITALITY ALERT

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### Scent branding? Can you protect your hotel's fragrance?



The lodging industry differentiates brands and facilities based on price, style, colors, room layout, services and many other things. These things make up the “trade dress” of the hotel and are protected by the Landham Act. 15 U.S.C. § 1051. The imagination of marketing professionals is almost unlimited. Most trade dress is based on visuals. Some trade dress includes audio– specific music, soothing sounds, plush beds and pleasing lighting. Occasionally hotels have ventured into aromas. Could that be a new marketing niche?

Consider that the scent industry is a multi-billion dollar industry. Candles, perfumes and air fresheners are part of our every-day lives. TV and radio are filled with advertising for these products. According to the [NewScientist](#), our noses are “exquisitely sensitive instruments that guide our everyday life to a surprising extent. Subtle smells can change your mood, behavior and the choices you make, often without you even realizing it.” Certain smells trigger memories much more powerfully than sights. So it makes sense that hotels start to include this in their branding, in their names and in their marketing.

Scents are currently used by some establishments to link a particular scent to that hotel – Westin Hotels infuses public areas with a white tea aroma and Omni Hotels provides a lemongrass and green tea scent in lobbies.

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This alert was first published by the Ohio Hotel & Lodging Association.

Consider these potential taglines:

Melanie's Bed and Breakfast – *"Where the smell of fresh baked bread greets you every morning."*

Or: Mom's B&B – *"All the sights and sounds and smells of home;"*  
*"Choose the Warm Apple Pie Room, the Rose Suite or the Mountain Air Abode."*

Or: Rustic Inns: *"Where you join the sights and smells of the forest."*

But your hotel name or tagline does not need to reflect your chosen aroma. You can simply put your chosen aroma in the lobby so that guests will associate your hotel with a chosen aroma.

So: HH "Hawaiian hospitality brought to you" A Hawaiian theme hotel could include the amazing smells of Hawaiian ginger flowers and white plumeria.



If you use an off-the-shelf aroma you may still be able to protect the association of that aroma to your hotel.

Once you get the guests in the hotel, then – if they like your aromas – they will associate that smell with your establishment in a positive way.

Is this something that needs legal protection? Can it be protected? Certainly the name(s) you use can be protected. The "Mountain Air Abode" could be protected as a servicemark. While trademark/ servicemark protection arises automatically from legitimate use, a scent that serves as a product or service identifier is also eligible for trademark registration in the United States. Scents, however, must meet an additional requirement called "acquired distinctiveness" to be registered as a trademark. If other hotels use a similar scent, such as the smell of cookies baking, consumers would not associate that scent with any particular hotel, and that scent would not be eligible for trademark protection. Further,

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the formulation of a particular aroma itself can be protected as a trade secret. If you use an off-the-shelf aroma, you may still be able to protect the association of that aroma to your hotel as part of your hotel's lodging concept – or trade dress – under the Landham Act.

The lodging industry has started to seek legal protection of proprietary aromas. If you believe that the association between the scent and your establishment is a competitive advantage for you, then you should take steps to protect that competitive advantage.

For more information please contact [David Tryon](#) or any member of Porter Wright's [Intellectual Property Practice Group](#).

