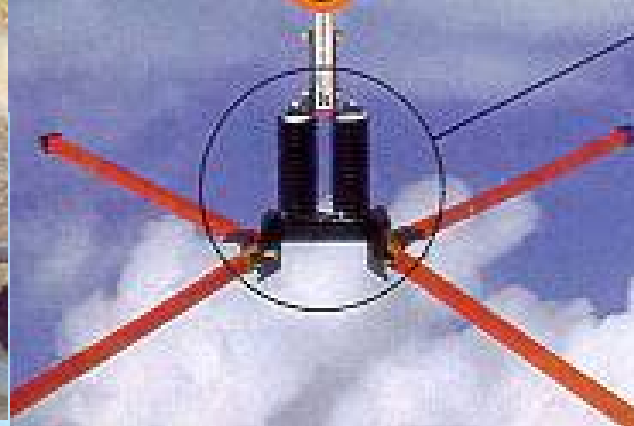


**Work-site
cata**



ter™



- **WINDMASTER®/SYSTEM 3®**
- **STEELMASTER®**
- **DURALATCH®**



MDI®

Traffic Control Products

1-800-521-6776

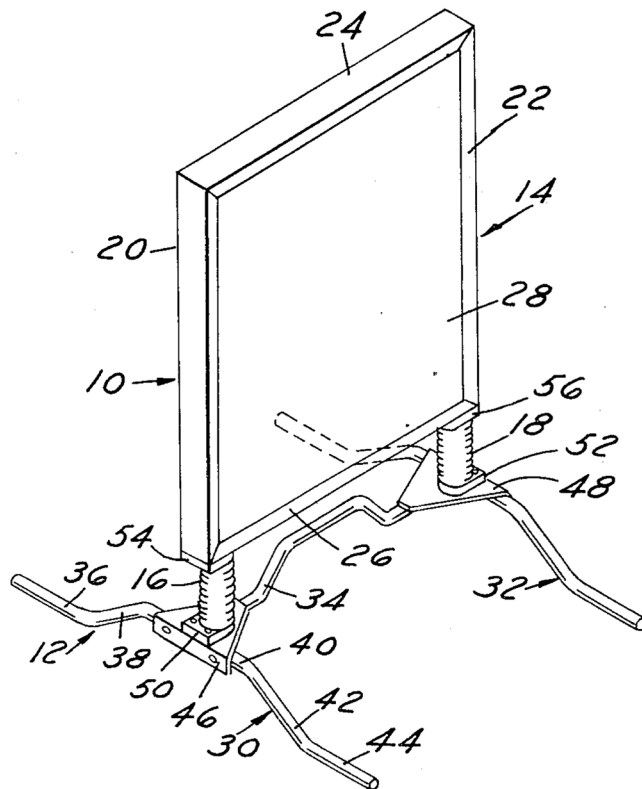


WindBuster features a dual spring mounted base for added stability during high winds and new Step-n-Drop legs enable you to set-up in seconds without having to bend over or stoop down.



TrafFix Devices v. Marketing Displays

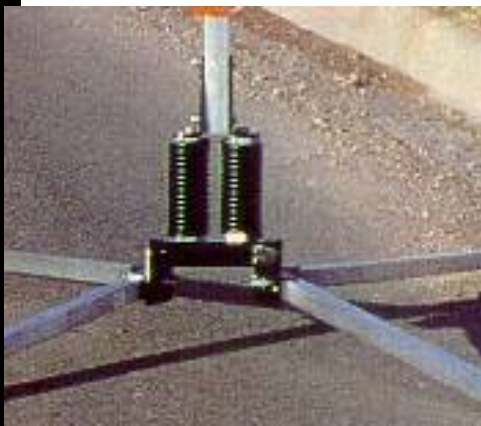
- “essential to the use or purpose of the product or affect its cost or quality”
- If patent claims trade dress at issue, then presumed functional



1. A display device comprising an unanchored base, said

base including a pair of spaced-apart elongated ground-engaging means, an upstanding frame structure having a relatively large surface area for receiving display indicia, a spring structure mounting the frame structure onto the base, said spring structure comprising an elongated torsion spring extending

entirely across the base, a pair of spaced-apart brackets securing the frame structure to the torsion spring, said spring structure being mounted centrally of the ground-engaging means with the plane of the frame structure at substantially right angles to the longitudinal axis of said ground-engaging means, the surface area of the frame being of a size which normally causes displacement of the base upon application of a sufficient wind force thereagainst, said spring structure normally maintaining the frame structure in an upright position and being yieldable in either direction along an axis generally parallel to the plane of the frame structure to permit downward deflection thereof, the area of the frame structure being proportioned to the size of the base to result in downward deflection of the frame structure upon a force applied thereto without displacement of the base.



TrafFix Devices v. Marketing Displays

- *TrafFix Devices v. Marketing Displays*
- “essential to the use or purpose of the product or affect its cost or quality”
- If patent claims trade dress at issue, then presumed functional
- Evidence dual spring helped function
 - and impacted costs
- Court not appear concerned with whether there were alternatives
- Looking for a “significant non-reputation-related disadvantage”

Trademark – Functionality

- Three types:
 - *Utilitarian Functionality* – trade dress/product configuration (*TrafFix*)
 - *Aesthetic Functionality* – trade dress/product appearance (*Qualitex*)
 - *Linguistic Functionality* -- genericness
- Looking for when protection creates barrier to entry that outweighs any reduction in consumer search costs