

SPECTRUM OF DISTINCTIVENESS

Placement on the spectrum of distinctiveness is based on facts of each case and is an important factor in the registrability of the "mark."

INHERENTLY DISTINCTIVE MARKS

No Acquired Distinctiveness Required

Types of Marks That May Be Registered

Arbitrary Marks

A word or symbol of common usage that is applied arbitrarily to a good or service. These types of marks do not suggest or describe the good or the service. Arbitrary marks are strong marks & immediately function as source identifiers.

Fanciful Marks

A term that is coined expressly for the purpose of functioning as a trademark or service mark. Fanciful marks are also considered strong marks & immediately function as source identifiers. Con: Needs policing to avoid misuse by others as a generic term.

Suggestive Marks

A word, symbol, or term that merely suggests some quality, characteristic or attribute of the good or the service, but does not directly describe the good or service. A suggestive mark may have an element of incongruity. Typically, it will require a person to use some imagination or multi-step reasoning process in order to understand that the mark describes some quality or aspect of the good or service.

NON-INHERENTLY DISTINCTIVE MARKS

Acquired Distinctiveness Required

Not Immediately Entitled to Registration

Merely Descriptive

A mark that directly tells the average purchaser of the good or service about a feature, characteristic, or attribute of the good or service. These marks may be more difficult to protect because people providing the same or similar goods/services may wish to use the same or similar descriptive terms.

Primarily Geographically Descriptive

A geographically descriptive mark identifies the place of origin of the goods or services. The place of "origin" is the place where the goods are produced or the location from which services are rendered. A geographic term can be applied to a variety of goods/services from the same area. So, a geographic term is not inherently distinctive.

Personal Name Marks

Primarily Merely a Surname: Surnames are not distinctive because they may be shared by more than one person. The law recognizes that each person may have an interest in doing business under his/her name. This is why long, substantial and exclusive use of the surname as a trademark or service mark is required for registration. Key is term's primary significance. Some surnames have a non-surname meaning that can be seen as the primary significance.

NO DISTINCTIVENESS

No Trademark/Service Mark Significance

Not Entitled to Registration Regardless of Years of Use

Generic Terms

Generic terms do not have a source identifying function. Generic terms are recognized as the name of the class of products or services. Look to the description of goods/services in the application. The fact that there may be more than one generic name for a product/service does not mean that the term sought for registration is not generic--there may be more than one term that the public understands as being a generic term for that product/service. Terms that can be described as "generic adjectives" that are used in the industry/trade to name a major characteristic of a product have also been found to have no trademark or service mark significance. "Lite" for beer; "Footlong" for sandwiches. Burden is on the filing office to provide evidence that the term is generic when a