## 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."

<table>
<thead>
<tr>
<th>INHERENTLY DISTINCTIVE MARKS</th>
<th>NON-INHERENTLY DISTINCTIVE MARKS</th>
<th>NO DISTINCTIVENESS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>No Acquired Distinctiveness Required</strong></td>
<td><strong>Acquired Distinctiveness Required</strong></td>
<td><strong>No Trademark/Service Mark Significance</strong></td>
</tr>
<tr>
<td>Types of Marks That May Be Registered</td>
<td>Not Immediately Entitled to Registration</td>
<td>Not Entitled to Registration Regardless of Years of Use</td>
</tr>
</tbody>
</table>

**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.

**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.

**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.

**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

This chart is based on Figure 11:1A in McCarthy on Trademarks and Unfair Competition (Thomson Reuters).