

FANCY TRADEMARKS

Trademark refers to a "LOGO" or a "BRAND" which identifies a particular product and helps to distinguish a particular line or brand of products from the other brands. A Trademark owner can be an individual , a business entity or any legal entity , in which the organisation or the entity is engaged in the manufacturing of those particular products.

CHARACTERISTICS OF A GOOD TRADEMARK:

- 1) A Trademark should be easy to pronounce and remember , if the mark is a word.
- 2) A Trademark should be capable of being discussed by a single word.
- 3) A Trademark should be of such character , which makes it spell correctly and write legibly.
- 4) A Trademark should be short.
- 5) A Trademark should be eye catchy.
- 6) A Trademark should satisfy the requirements of registration.

In order to protect your trademark from any infringement from any other person , A TRADEMARK SHOULD BE UNIQUE IN NATURE i.e Name of the trademark should be DISTINCTIVE AND DIFFERENT which helps to identify or separate the products of a company from other company's products.

BIGGEST QUESTION : Is your trademark "FANCIFUL"?

If there is one question that is not asked enough in the realm of intellectual property, it is, "Is your trademark you are considering strong enough?" Trademark registration is granted on a number of bases, one of the most important being the relationship of the mark to the goods and services. It is essential to find a mark as unrelated as possible to your business's goods or services for the best trademark protection. That relationship, in turn, has an effect on the "strength" of the mark and, therefore, the mark owner's ability to take advantage of the rights and privileges granted by registration.

DIFFERENT CATEGORIES OF WORD MARKS THAT CAN BE REGISTERED:

1) Fanciful :

The strongest trademark. The mark has no relation to the business's goods and services, and that creates a presumption that the mark's existence is owed to them. They are unique and made up words created as trademarks that had no bearing on the related goods.

EXAMPLE : KODAK , POLAROID , SNICKERS , M&M , GOOGLE etc.

2) Arbitrary :

It is a strong mark, but weaker than a fanciful mark. The mark has no relation to the product, but the word already exists.

EXAMPLE : Apple and all , are real words, but there is nothing about Apple or All that might lead a prospective purchaser to associate those words with computers or laundry detergent.

3) Suggestive :

This mark suggests something about the product , however , connection between the mark and the goods or services must still not be completely obvious.

EXAMPLE : Frigidaire, iPad, Xerox, Walkman, and Mercury are examples of marks suggesting goods associated with cold air (refrigerators), pads to write on (hand-held computing devices), equipment used in xerography (copiers), a man walking about (portable, personal stereos), and getting somewhere as fast as a Roman god's messenger (motors, e.g. outboard motors for boats).

4) Descriptive :

This mark describes the product. This is a very weak trademark that requires "secondary meaning" in order to gain trademark protection. The mark owner must prove that the public can identify that the product comes from the mark owner.

EXAMPLE : "The milk chocolate melts in your mouth, not in your hands" is descriptive of any chocolate candy coated with a hard shell, but after many

years of continuous use the consuming public associated that slogan with M&M's chocolate candies, entitling the maker to registration.

ASSESSING DISTINCTIVENESS OF A TRADEMARK :

In trademark litigation, courts are most frequently asked to parse between suggestive and descriptive marks on the one hand, and between descriptive and generic marks on the other. This is because suggestive marks, like fanciful and arbitrary marks, are presumed to be entitled to trademark protection, while descriptive marks are entitled to protection if they have become known as representing the producer of the goods, and generic marks can never receive protection. **A general method for assessing the distinctive character of a mark is to consider a consumer's reaction to a mark. The mark may only be inherently registrable if the consumer has never encountered the mark before. On the other hand, the mark is unlikely to be inherently registrable if it informs him about any characteristic of the relevant products or services (e.g. whether they are delicious, large, spicy, black or sweet, in the case of fruit). In any other case the mark may not be registrable.**

Primary consideration in the selection and use of trademarks should be given to marks which are inherently distinctive, as they possess the strongest distinctive character and do not require evidence of use to establish acquired distinctiveness. A fanciful, arbitrary, or suggestive term can be inherently distinctive without proof of acquired distinctiveness. Although these categories are most easily applied in relation to trademarks comprising words, the same general principles are applied in relation to all kinds of trademarks. For example, a pine tree shape is descriptive when used on pine-scented products.

ACQUIRED DISTINCTIVENESS OF A TRADEMARK :

A trademark with no distinctive character (i.e. a mark which is not inherently distinctive) is prima facie unregistrable. However, most jurisdictions may still allow such marks to be registered if the trademark owner can demonstrate, typically by reference to evidence of use, that consumers in the marketplace exclusively associate the mark, as used on the identified goods or in connection with the identified services, with a particular commercial origin or source (i.e. the trademark owner). "Use" may include authorized use by a licensee or other party. If the trade marks office is satisfied that the evidence

demonstrates that a mark has "acquired" distinctive character as a matter of fact, then the mark may be accepted for registration on the basis of acquired distinctiveness.

The essential function of a trademark is to exclusively identify the commercial source or origin of products or services, such that a trademark, properly called, indicates source or serves as a badge of origin. The use of a trademark in this way is known as trademark use. Certain exclusive rights attach to a registered mark, which can be enforced by way of an action for trademark infringement, while unregistered trademark rights may be enforced pursuant to the common law tort of passing off. It should be noted that trademark rights generally arise out of the use and/or registration (see below) of a mark in connection only with a specific type or range of products or services. Although it may sometimes be possible to take legal action to prevent the use of a mark in relation to products or services outside this range (e.g. for passing off), this does not mean that trademark law prevents the use of that mark by the general public. A common word, phrase, or other sign can only be removed from the public domain to the extent that a trademark owner is able to maintain exclusive rights over that sign in relation to certain products or services, assuming there are no other trademark objections. For a case study in both concepts, see Apple Corps and its disputes with Apple, Inc.