

Trademark

THE SPECTRUM OF DISTINCTIVENESS

Distinctiveness Requirement

- The trademark must be distinctive. No trademark protection will exist without it.
- Similar to the novelty requirement for Patents and the originality requirement for copyrights.
- The purpose of this requirement is to make the product's source recognizable. This serves to prevent confusion among consumers as to what they are purchasing.

Secondary Meaning

- The public's association of a product or service with a company.
- Secondary meaning is not immediate, but is established over time.
- Example: “Raisin Bran” with a particular Kellogg cereal

Fanciful Marks

- These are made up words, symbols or devices
- The words, symbols or devices bear no relation to the goods or services.
- Examples: Google and Zerox
- Considered the strongest type of mark in the spectrum of distinctiveness

Arbitrary Marks

- Unlike fanciful marks, arbitrary marks are real words.
- These marks do not describe the goods or products.
- Examples: Apple common word for computer company. As you can see, Apple is a common word that does not bear a descriptive relationship to a computer.
- These marks are eligible for trademark registration.

Suggestive Marks

- These marks *imply* a characteristic of the good or service being sold
- Example: Coppertone for sunscreen lotion
- Minimum required for a mark absent a secondary meaning.

Descriptive Mark

- Describes the purpose or attribute of a service or good.
- This type of mark is not eligible for trademark absent a secondary meaning.
- Windows Software would be eligible since it has established a secondary meaning.

Generic Marks

- Least distinctive type of mark
- Common name for good or service being sold
- Example: The name “Basket Shop” only to denote a store which sells baskets.
- Not eligible for trademark even if it has acquired secondary meaning through advertising.

Trademark Validity

- It is conceivable that the public can associate a trademark with an entire category of products, thus losing its trademark protection. When this happens the trademark becomes generic.
- Example: Aspirin