

Letters and numerals

Application of new practices

Letters and numerals in a distinctive combination, or stylised in a distinctive way, have a distinctive character and are registrable as trade marks. However letters and numerals that are descriptive or customary in the trade, or devoid of distinctive character, are not registrable, at least without evidence of distinctive character acquired as a result of their use as a trade mark.

Single letters

Single letters represented in an ordinary way are considered devoid of any distinctive character as trade marks, and without evidence of acquired distinctive character, are refused registration (sections 11(1)(b) and 11(2)). For example, the letter “X” is considered devoid of any distinctive character.

Two or more letters

Two or more letters are registrable, unless the letters designate a characteristic of the goods or services of the application (for example “ABC” for guide books or directories, or “XL” for clothes) or are devoid of any distinctive character (for example “A-OK”).

Descriptive abbreviations

Marks that are merely abbreviations for the particular goods or services are considered to be devoid of any distinctive character. For example in relation to software, “SDK” is short for “software development kit”, a package that enables a programmer to develop applications for a specific platform and is devoid of

distinctive character. However, “VSS” for software is registrable because it is not a known abbreviation, even if it could stand for “virus software solutions”.

Numerals

Single numerals represented in an ordinary way are considered devoid of any distinctive character as trade marks and are refused registration (section 11(1)(b)). However, evidence may show that the numeral has in fact acquired a distinctive character as a result of the use made of it (section 11(2)).

Two or more numerals that are strung together and that are not descriptive are registrable without evidence of acquired distinctive character. For example, 42, 427, or 4-2-7 are considered registrable without evidence.

Some numerals may be considered descriptive and are not registrable, at least without evidence of acquired distinctive character. For example “20” or “200” for cigarettes which are packaged in boxes of 20 or cartons of 200, or “2008” which is a future date and likely to be used to designate new products, or “1500” for vehicles of a particular engine size or “512” for computers of a particular capacity (section 11(1)(c) or (d)).

Some numerals may be considered devoid of any distinctive character in respect of goods or services in particular industries. For instance, 3- or 4-digit numerals are often used as access codes for telecommunication services. They are considered devoid of any distinctive character for services related to telecommunications or goods such as telephone cards, and are not registrable without evidence of acquired distinctive character.

Letters and numerals combined

A combination of a letter or letters and a numeral or numerals may have a distinctive character, for example “2U4U” for shoes and boots.

The practice of using numbers and letters in some industries can mean that a mark will not be recognised as indicating origin and as such, will not have distinctive character. For example, *JERYL LYNN Trade Mark* [1999] FSR 491, where “RIT4385” was used to describe a virus strain and “M-M-R-II” was used to describe a vaccine for measles, mumps and rubella.

Some combinations of letters and numerals may simply designate the characteristics of the goods, for example “4WD” for vehicles, “MP3” for music players, or “512MB” for memory cards. Other combinations may be devoid of any distinctive character, for example “1st Class”. Objections under section 11(1)(b) or (c) would be raised against such marks.

Mark showing year that business was established

Applicants do not have to file a statutory declaration to support registration of a mark that shows the year in which the business was established.

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