

Letters and numerals

Overview

Trade marks may consist of letters and numerals. However, letters and numerals that are descriptive, customary in the trade or devoid of any distinctive character, are not registrable, at least without evidence of distinctive character acquired as a result of their use as trade marks.

Single letters

Although the distinctive character of single letter marks should, like other types of marks, be assessed by reference to the goods or services applied for and the perception of them by the relevant public, the relevant public's perception of these marks may not be the same as other word marks, and it may prove more difficult to establish distinctiveness for marks consisting of a single letter than other word marks. Each case should be examined on the specific facts. Care should be taken to avoid registering single letter marks that are descriptive, such as the letter "S" for clothing in Class 25. Particular care is required where the goods are technical items such as motors, machines and computers, where certain letters may have a descriptive meaning or have become customary in the language or in the honest and established practices of the trade.

If, upon examination, a single letter mark is found to be descriptive, customary in the trade and/or devoid of any distinctive character in respect of the goods or services concerned, registration would be refused unless there is evidence of distinctive character having been acquired as a result of the use made of the mark (section 11(2)).

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, “CVSP” on its own for software is registrable because it is not a known abbreviation, even though it could stand for “computer virus scanning programme”.

Descriptive words paired with corresponding abbreviations/ acronyms

Where a word mark consists of the juxtaposition of a descriptive word combination and a non-descriptive letter sequence, if the relevant public perceives the letter sequence as an abbreviation of the word combination by reason of the fact that each letter in the sequence reproduces the first letter of each word of that combination, the mark in question, when considered as a whole, would be understood as a combination of descriptive indications or abbreviations which is therefore devoid of distinctive character. Objections under section 11(1)(b) and (c) would be raised against an application for registration of such mark.

In other words, the mere fact of bringing a letter sequence as an abbreviation, which is non-descriptive and may be considered to have distinctive character in itself, and a descriptive word combination together, without introducing any unusual variations, would be liable to result in a verbal expression consisting exclusively of signs or indications which may serve, in trade, to designate the characteristics of the goods or services concerned and is also devoid of distinctive character. Factors such as how the goods or services applied for is likely to be abbreviated in trade or business, or that the initial letters may spell out another word combination or have other meanings, will not have any relevance to the assessment and determination of *prima facie* distinctiveness.

As an example, in a trade mark application for the word mark “CVSP computer virus scanning programme” for software, since the corresponding letter sequence “CVSP” clearly and unambiguously represents the initial letter of each word in “computer virus scanning programme”, objections under section 11(1)(b) and (c) would be raised

against the application.

See the joined cases of *Alfred Strigl v Deutsches Patent- und Markenamt* (Case C-90/11) and *Securvita Gesellschaft zur Entwicklung alternativer Versicherungskonzepte mbH v Öko-Invest Verlagsgesellschaft mbH* (Case C-91/11) where the Court of Justice of the European Union (“CJEU”) considered that the word combinations and the letter sequences, in the form of “Multi Markets Fund MMF” and “NAI – Der Natur-Aktien-Index”¹ respectively, were intended to clarify each other and to draw attention to the fact that they were linked. Each letter sequence was therefore designed to support the relevant public’s perception of its corresponding word combination which was descriptive of the services applied for or registered, by simplifying its use and by making it easier to remember. The fact that the letter sequence preceded or followed the word combination was held to be of no importance.

In respect of word combinations which are not descriptive but are open to objection under section 11(1)(b) alone for being devoid of distinctive character, the Registrar, when examining its *prima facie* distinctiveness, will consider factors such as the nature of the goods or services applied for, whether the juxtaposed letter sequence is a known abbreviation or how it is likely to be abbreviated in trade. Each case has to be decided on its own merits. For example, the mark “PBI please buy it” for coffee is *prima facie* registrable. While the word combination “please buy it” on its own is devoid of distinctive character, the letter sequence “PBI” is not a known abbreviation and is also not likely to be abbreviated in the coffee industry, both of which render the mark as a whole to be *prima facie* registrable. On the other hand, “HKCOLTD Hong Kong Company Limited” for meat is *prima facie* unregistrable. Since “HKCOLTD” is known as an abbreviation of its juxtaposed word combination “Hong Kong Company Limited” and that word combination by itself is not distinctive in trade, the mark as a whole is devoid of distinctive character.

Marks containing acronyms (i.e. a pronounceable word made up of a series of initial letters) are generally treated similarly as words paired with abbreviations given that the distinction between an acronym and an abbreviation is negligible in most cases. However, where the use of an acronym (as opposed to an abbreviation) introduces word-play or other unusual features into the mark, the mark as a whole may become

¹ The letter sequence “NAI” does not encompass the initial letter of the word “Der” contained in the word combination that follows it as the word “Der” is a definite article in German, like the word “the” in English.

inherently distinctive and hence registrable. In any event, each case has to be decided on its own merits.

Numerals

Like other types of marks, the distinctiveness of a mark consisting of single digit number is assessed by reference to the designated goods or services and the perception of the consumers of those goods or services. Single digit number marks often face objections because many of them are used in trade to designate a characteristic of many goods. However, each case would have to be considered on its facts. Single digit numbers which are found to be descriptive (e.g. the numeral “6” in respect of footwear in Class 25), customary in the trade and/or devoid of any distinctive character are not *prima facie* registrable (section 11). Evidence may be filed to 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 “2020” 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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