

distinctiveness

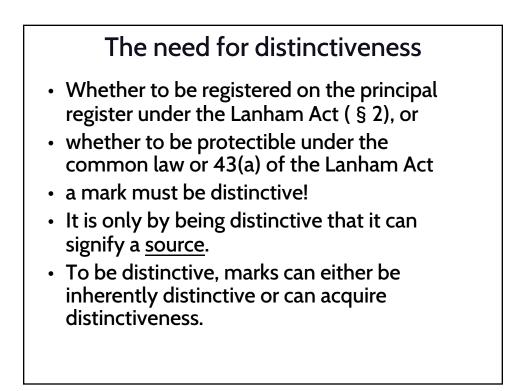








inherently distinctive	fanciful arbitrary suggestive		misdescriptive	inherently distinctive product packaging	
can acquire distinctiveness	merely descriptive	primarily geographically descriptive	deceptively misdescriptive	non-inherently distinctive product packaging product design color	primarily a surname
unprotectable	generic	primarily geographically deceptively misdescriptive	deceptive	functional	names/likenesses of living people without consent gov't symbols



Two ways to be distinctive

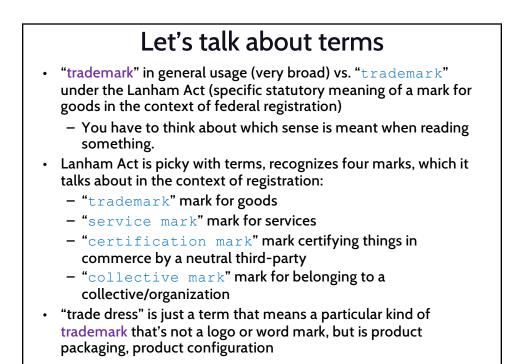
- "First a mark is inherently distinctive if '[its] intrinsic nature serves to identify a particular source.'"
- "Second, a mark has acquired distinctiveness, even if it is not inherently distinctive, if it has developed secondary meaning, which occurs when, "in the minds of the public, the primary significance of a [mark] is to identify the source of the product rather than the product itself."

Wal-Mart v. Samara Brothers (U.S. 2000) (citing Inwood Labs v. Ives Labs (U.S. 1982))

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