

PROTECTING YOUR BUSINESS FROM MARKET IDENTITY THEFT

Among your business' most valuable assets are its distinctive trademarks and service marks—the brands used by your customers and prospects to identify your products and services. A word, phrase, symbol, logo or other distinctive device can be a valuable mark.

But business owners often learn too late they did not take proper steps to **SELECT** and **PROTECT** their marks. Among other considerations, if a mark is generic, too descriptive, or similar to someone else's mark, your company may not be able to prevent competitors from using that mark as well. Worse, your company may find itself defending lawsuits for infringing the marks of others.

Word marks businesses use to identify their products and services usually fit into one of five categories. But not all of them make valuable trademarks. See the categories at right, in order of least valuable to most valuable.

Generic— the common term used for the product or service; these are not defensible. Example, APPLE for apples.

Descriptive— a term describing a quality or feature of the product or service; these are usually not defensible and have little value as a trademark or service mark. Example, CRISPY RED for apples.

Suggestive— a term which may suggest the product or service, but just as likely to be associated with other goods or services; these marks may be strong enough to defend but are not the strongest. Example, SUMMER SWEET for apples.

Arbitrary— a common term not normally used in the context of the product or service; these are strong marks, easier to defend. Example, HIGH COUNTRY for apples.

Fanciful— a non-word, made up or coined specially for the product or service; these are the strongest and easiest trademarks and service marks to defend. Example, KODON for apples.

Your company should carefully **SELECT** its trademarks, obtaining *prior searches and advice from experienced Intellectual Property counsel*, to avoid wasting resources promoting non-defensible or weak marks, and to avoid infringing the marks of others. Your business should take proactive steps to **PROTECT** its marks. *Proper registration and policing the marketplace are among legal tools necessary to deter competitors from infringing your company's marks and destroying valuable market identity.*

QUESTIONS? GET ANSWERS 

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