



Natoli-Lapin, LLC
304 Park Avenue South
11th Floor
New York, NY 10010
(212) 537- 4436
(866) 871- 8655
Support@LanternLegal.com
www.LanternLegal.com

TRADEMARK "SECONDARY MEANING" EXPLAINED

What is secondary meaning?

A trademark that has acquired *secondary meaning* means that the trademark has become recognized as a brand for specific goods and services from a single source.

To be eligible for protection under trademark law, a trademark must be distinctive. That is, a trademark must be capable of identifying and distinguishing the goods or services of the trademark owner from those of competitors. Trademarks vary in distinctiveness, and a trademark may be either inherently distinctive or, alternatively, may acquire distinctiveness as a result of recognition by the relevant consuming public after a period of use. Secondary meaning refers to the consuming public's recognition of the mark as a result of its use for a period of time.

The degree of inherent or acquired distinctiveness of a trademark is relevant to the scope of protection to which it is entitled. The level of protection afforded to a trademark will depend on the distinctiveness of the trademark. In assessing their protectability, trademarks are often grouped on a continuum called the "spectrum of distinctiveness." The spectrum ranges from fanciful trademarks, which are the most protectable, to generic terms, which are not protectable at all.

When must a trademark acquire secondary meaning in order to gain registration?

Trademarks that are deemed to be merely descriptive of the goods or services with which they are used will be denied protection and will be unregistrable, unless *secondary meaning* can be shown. Trademarks that are only slightly descriptive need only a minimal level of use to acquire secondary meaning. Descriptive trademarks include:

- Trademarks that merely describe the intended purpose, function, quality, size, ingredients, characteristics, class of users, or intended effect on the user of the goods or services they identify
- Trademarks that primarily describe the geographical origin of the goods or services
- Trademarks that primarily constitute a person's surname
- Trademarks that primarily describe laudatory aspects of the goods or services, such as "the best beer in the world!"

How does a trademark owner prove that a trademark has acquired the necessary secondary meaning?

In order to prove that a trademark has acquired secondary meaning, both direct and circumstantial evidence may be used to show that the consuming public recognizes the trademark as a brand of a single source. Examples of direct evidence include consumer testimony and consumer surveys. Circumstantial evidence of secondary meaning includes evidence relating to the length, manner, and exclusivity of the trademark's use, advertising expenditures, and amount of sales and number of customers.

PLEASE FEEL FREE TO [CONTACT US](#) ANYTIME FOR A FREE CONSULT



LIGHTING THE WAY
FOR ENTREPRENEURS!