

# Three Keys for Picking a Good Trademark

by Warren M. Pate



To build a successful business, an innovator must first lay a strong foundation. A well chosen trademark is often a key component of that foundation. Here are three keys to help you pick a good trademark.

## Key #1 – Pick a mark that is inherently distinctive.

To be inherently distinctive, your mark must fit within one of the top three levels of a five-level hierarchy of distinctiveness.

The first level is for marks that are fanciful. They are the strongest marks and comprise invented words that have no ordinary meaning. EXXON, KEVLAR, KODAK, and TEFLON are examples of fanciful marks.

The second level is for marks that are arbitrary. They have ordinary meaning, but are used in a way that disregards that ordinary meaning. APPLE and AMAZON are two examples of arbitrary marks because the “apple” fruit has nothing to do with computers and the “Amazon” jungle has nothing to do with an online store.

The third level is for marks that are suggestive. A mark is suggestive if it hints at or suggests something about the products or services sold under the mark. AIRBUS used in connection with airplanes is an example of a suggestive mark.

The fourth level is for marks that are merely descriptive. These marks merely describe some characteristic of the products or services sold under the mark. The mark INTERMOUNTAIN HEALTHCARE is arguably merely descriptive.

The fifth level is for marks that are generic. They are so weak that the public sees them as ordinary words,

not as marks. WATER for bottled water would be an example of a generic mark.

To help you pick a mark that is inherently distinctive (i.e., fanciful, arbitrary, or suggestive), imagine asking a stranger “My trademark is (insert your proposed mark). What do I sell?” If he or she could tell you, your mark is likely not inherently distinctive.

## Key #2 – Don’t pick a mark that is close to something already out there.

When it comes to selecting a trademark, the world is your oyster! There is no need to cheat yourself and others by picking something that is too close to a mark used by someone else. A few hundred dollars on a competent trademark search is money well spent.

## Key #3 – Don’t include descriptive text in your mark.

You can use, and likely will need, descriptive text in your logo. However, don’t set it on equal footing with your mark. For example, your logo should not be SHAMROCK PLUMBING. It should be SHAMROCK, with “plumbing” written below in a much smaller font.

*By making this article succinct, it cannot also be complete in every way. Accordingly, when strategizing and planning future activities, it is highly recommended that you consult an experienced attorney regarding any specific action you plan to take (or not take) in view of the specific facts of your situation.*



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*I teach small business owners proven patent and trademark strategies and help them implement those that align best with their resources and goals. If I can be of service to your small business, please give me a call!*