

TM CHECKER – DISTINCTIVENESS

A distinctive trade mark is something that you've created that sets you apart in the marketplace. Some examples of distinctive trade marks are invented words like Optus, or ordinary words used in an unusual context like Apple for computers.

Registering a trade mark gives you the right to stop other people using those words or images. This means it'll be harder to include words that should be free for everyone to use.

Common sayings like "One Stop Shop" would be hard to register. For the same reason, it can be harder to use words with common surnames or geographic locations.

As an example, applying for the trade mark Penrith Dry Cleaners would be difficult to register because the other dry cleaners in Penrith have the right to use those words to describe their services too.

Distinctiveness can be complex and TM Checker's algorithms are continuously improving. Receiving a distinctiveness warning doesn't mean you can't apply but there are a few options that you should consider.

You could try editing your trade mark details. In some cases applying for the logo as well as the word trade mark can build a stronger case. You could seek professional advice.

If you feel your trade mark is distinctive enough you could decide to apply anyway. This option will cost money since an IP Australia employee would be making a full assessment.

Find out more by visiting the IP Australia website.