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CONCEPT OF DISTINCTIVENESS - AN UNDERSTANDING THROUGH TRADEMARK LAW

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LIST OF CASES

1. *Abercrombie & Fitch Co. v. Hunting World, Inc.* 537 F.2d 4 (2nd Cir. 1976)
2. *Amritdhara Pharmacy v. Satya Deo Gupta* (1963) 2 SCR 484
3. *General Electric Co. v. General Electric Co Ltd.* (1972) 2 All ER 507
4. *Ishi Khosla v. Anil Aggarwal* (2007) 34 PTC 370 Del.
5. *M/S Kee Pharma Limited v. M/S Big M Healthcare & Anr* (2012) 5 R.A.J.314
6. *Starbucks v. BskyB* (2012) EWHC 3074
7. *Whirlpool Corporation v. Registrar of Trademarks* (1998) 8 SCC 1, p. 14

INTRODUCTION

“The ideal trademark is one that is pushed to its utmost limits in terms of abstraction and ambiguity, yet is still readable. Trademarks are usually metaphors of one kind or another. And are, in a certain sense, thinking made visible.” - Saul Bass¹

Throughout the history of business and commerce, distinctive marks have been used by producers, sellers, and the like to differentiate their goods and services from those of their competitors. The demand for distinctive marks grew exponentially along with the growth of market economies and the need to differentiate goods and services..²

Trademark forms a sub-category of intellectual property and is recognised by most countries worldwide. It is a visual symbol, consisting of a recognizable sign, design, or expression that identifies products or services from a particular source and distinguishes them from others.³ The

¹Philip French, “Saul Bass: A Life in Film & Design by Jennifer Bass and Pat Kirkham -review”, *The Guardian*, October 29, 2011, available at www.theguardian.com (last visited on June 25, 2023).

²Annette Kur, Max Planck, *et. al.*, *European Intellectual Property Law: Text, Cases & Materials* 156 (Edward Elgar Publishing, Incorporated, 1st Ed. 2013).

³United States Patent and Trademark Office, “Trademark, Patent or Copyright”, available at: <https://www.uspto.gov>

trademark owner can be an individual, a business organisation, or any legal entity. For instance, Louis Vuitton, the famous luxury brand has obtained a trademark for its check pattern which is known as the Damier Pattern, the infamous confectionery brand Cadbury has the colour purple trademarked for its chocolates even though the trademark for a single colour is very hard to obtain and Coca-Cola has a trademark for its bottle's design.⁴ The trademark law is broadly based on the three doctrines, namely, (1) distinctive character, or capability of being distinguished, (2) deceptive similarity or similarity or near resemblance of marks, and (3) same description or similarity of goods.⁵

In India, the law of trademark is governed by the Trade Marks Act of 1999. The object of the Act is to provide for registration and better protection of trademarks for goods and services and to intercept the use of fraudulent marks. The Act defines a trademark as a mark capable of being represented graphically and distinguishing the goods or services of one person from those of others.⁶

The primary criterion for a trademark to stand out is its quality of distinctiveness. The standard for distinctiveness is similar to those for innovation in patents and originality in copyright. Without distinctiveness, there can be no trademark. In *General Electric Co. v. General Electric Co Ltd.*,⁷ the Court observed that the right of property in trademark was an adjunct of the goodwill of a business and was incapable of separate existence dissociated from that goodwill. Therefore, distinctiveness flourished as a concept under trademark to determine the subject matter that can be protected under this law.

In layman's terms, distinctiveness is the quality of being easily recognisable because of being different from other things. A long-standing monopoly right of trademark requires that it is capable of performing the necessary function of distinguishing the goods and/or services of one trader from those of the others. This capability of distinguishing is referred to as the 'distinctiveness' of a trademark. Such capability may be an inherent distinctiveness in the mark itself or perhaps an acquired distinctiveness through the use of the mark over a considerable

(last visited on June 25, 2023).

⁴Sana Singh, "India: Trademark Law In India – Types Of Trademarks, Registration Procedure And Acquired Distinctiveness Of Generic Words" (September, 2021), available at: <https://www.mondaq.com> (last visited on June 25, 2023).

⁵P. Narayan, *Law of Trademarks and Passing Off* 1 (Eastern Law House, Kolkata, 6th edn., 2004).

⁶The Trade Marks Act, 1999 (Act No. 47 of 1999), s. 2(1)(zb).

⁷(1972) 2 All ER 507.

period.

The article thoroughly analyses the concept of distinctiveness doctrine in the context of trademark law. While trademark law still lacks a coherent, uniform, and predictable framework for deciding the distinctiveness of several image marks, it has long used the “imagination” test to effectively determine a word mark’s distinctiveness. This article further reflects on the spectrum of distinctiveness, makes an assessment of the quality distinctiveness, assembles and examines the registration criteria of a trademark in the Indian context, and makes a quick analysis of the standard of distinctiveness of trademarks across countries.

SPECTRUM OF TRADEMARK DISTINCTIVENESS

The idea of ‘trademark distinctiveness’ determines the degree of protection provided to marks linked with certain goods and services. A mark may fall within a specific category on the trademark distinctiveness spectrum and such depends on the quality of uniqueness when used in connection with the goods or services being offered. While some marks are given greater protection under the trademark law, others however may not be given equivalent protection or no protection altogether solely based on their quality of distinctiveness.

Illustratively speaking, the case law *Abercrombie & Fitch Co. v. Hunting World, Inc.*⁸ is an adequate reference for understanding the spectrum of distinctiveness. Justice Learned Henry Jacob Friendly has established five categories of marks along a spectrum of distinctiveness:-

1. **Generic Mark** - Any word that is commonly used for a particular good or service is considered generic. It is the least distinctive mark and does not typically receive trademark protection. For example, a company cannot register the terms “CAR” for vehicles or “BICYCLE” for bike sales, services, or stores. These marks do not warrant protection because if one seller could trademark a generic name, other sellers would be unable to describe their products and would thus be at a great disadvantage. A successful product or service may become associated with a broader category of related items and services. When this occurs, a legal trademark may become a generic name, and the trademark will be lost, as was the case with “Cellophane”, “Aspirin”, and “Xerox”.

⁸537 F.2d 4 (2nd Cir. 1976).

2. **Descriptive Mark** - A Descriptive marks, which define the purpose, nature, or attribute of a product or service, are not eligible for trademark registration unless a secondary meaning or association has been formed via public usage. For instance, the label “24-HOUR FITNESS ®” when used in reference to an athletic gym or leisure facility is descriptive. Another example is the use of “AMERICAN AIRLINES ®” to refer to an American airline.
3. **Suggestive Mark** - Such a mark suggests a product or service’s quality or trait, but connecting the mark to the product or service needs imagination, cognition, or observation. “GREYHOUND®” in relation with transportation is a well-known example of a suggestive mark, as “greyhounds” implies speed. In the words of Judge Friendly, “The validity of the mark ends where suggestion ends and description begins.”⁹ However, a suggestive mark is distinctive enough for trademark protection.
4. **Arbitrary Mark** - A mark is arbitrary if it uses a word that already exists but is used in connection with a product or service that has no relation to the word. For example, a popular brand selling computers, television, and cell phones use the mark “APPLE ®,” a word which is unrelated to the products the company sells. Arbitrary marks are granted full protection under trademark law.
5. **Fanciful or Coined Mark** - The most distinctive marks are called “fanciful” marks which are made up of an invented word or phrase. These are meaningless and distinguish the product or service from other vendors in consumers’ views. Popular examples of fanciful marks include “GOOGLE ®,” “VERIZON ®,” “EXXON ®,” and “PEPSI ®.” These marks are provided full trademark protection. Invented words are afforded strongest protection because of their inherent newness.

ASSESSING AND MEASURING DISTINCTIVENESS

A trademark can be registered only if it is distinctive in nature. Section 9 of the Trade Marks Act, 1999 provides grounds on which a mark can be refused for registration. To register a mark, it must not cause confusion, be distinctive, and not consist solely of customary marks or indications

⁹*Abercrombie & Fitch Co. v. Hunting World, Inc.* 537 F.2d 4 (2nd Cir. 1976).

in the present language or trade practices.¹⁰ Furthermore, the mark must not offend religious sentiments. must not be obscene and must not be a mark protected under the Emblems and Names (Prevention of Improper Use) Act, 1950.¹¹ Such marks cannot be registered. Additionally, a mark shall not be registered as a 'trade mark' if it consists exclusively of - a) the shape of goods which results from the nature of the goods themselves; or b) the shape of goods which is necessary to obtain a technical result; or c) the shape, which gives substantial value to the goods.¹²

The Supreme Court in *Amritdhara Pharmacy v. Satya Deo Gupta*¹³ has elaborated upon the aspect of confusion as follows - "The Act does not lay down any criteria for determining what is likely to deceive or cause confusion. Therefore, every case must depend on its own particular facts, and the merit of authorities lies in the tests applied for determining what is likely to deceive or cause confusion. On an application to register, the Registrar or an opponent may object that the trade mark is not registrable due to clause (a) of S.8, or sub-section (1) of S.10 (of Trade Marks Act 1940)."

ASSESSMENT OF SECONDARY MEANING -

To qualify as a trademark, a non-inherently distinctive mark must have a significant secondary meaning. In order to assess if a mark has attained secondary meaning, factors such as customer's perception displaced primary meaning, exclusivity of use, manner of use, duration of use, volume of goods marketed, advertisement, consumer surveys have to be considered.¹⁴ In assessing therefore the relevant class of people from whose perspective the sign must be assessed comprises the average consumers of the category of goods, who are reasonably well informed and reasonably observant and circumspect.¹⁵ A mark is evaluated as a whole, and parts that lack distinctiveness or are descriptive may not be dismissed.¹⁶ In order to exclude marks, which do not even perform the distinguishing function, it is important to assess whether the mark is devoid of distinctive character. Marks are not required to be inventive, innovative, imaginative, unusual, or creative and are only excluded if they lack distinctiveness.¹⁷

¹⁰The Trade Marks Act, 1999 (Act No. 47 of 1999), s. 9(2)

¹¹ibid

¹²ibid

¹³(1963) 2 SCR 484

¹⁴"Trademarks- Concept of Distinctiveness and grounds for refusal of trademarks registration", available at: <https://epgp.inflibnet.ac.in> (last visited on June 25, 2023).

¹⁵ibid.

¹⁶P. Narayan, *Law of Trademarks and Passing Off* (Eastern Law House, Kolkata, 6th edn., 2004).

¹⁷"Trademarks- Concept of Distinctiveness and grounds for refusal of trademarks registration", available at: <https://epgp.inflibnet.ac.in> (last visited on June 25, 2023).

COLOURS WHETHER DISTINCTIVE -

Simple colour marks are likely to be treated as devoid of distinctive character as it is not capable of inherently distinguishing goods or services. Colours are very difficult to register as trademarks. To be considered distinctive, the colour alone must identify the origin of the products or services being applied for. A colour trademark may never be regarded as fundamentally distinctive, as consumers must be taught that the colour of a product or service label reflects its origin.¹⁸ Moreover, the limited number of colours makes it not preferable to marking them.¹⁹ However, shades that reduce specification can be fine. According to Section 10 of the Act, a trademark may be limited wholly or in part to any combination of colours. Any such limitation is to be taken into consideration by the tribunal while deciding the distinctive character of the trade mark. The Supreme Court in *Whirlpool Corporation v. Registrar of TradeMarks*²⁰ observed, “So far as a trade mark is registered without limitation of colour, it is deemed to have been registered for all colours.”

SHAPES WHETHER DISTINCTIVE -

In determining the question of shape as a distinctive trade mark, one must see if the shape is significantly different and thereby fulfils its essential function. It must be noted whether there is anything unusual about the shape, such that the relevant consumer would notice and remember it.²¹ According to Section 9 (3) (c) of the Trade Marks Act, 1999, the assessment is to be made for measuring whether the relevant consumer shall think of the shape as indicative of the source, rather than being merely functional or decorative. The shape ought to be distinctive and depart from its ordinary use in the sector and must have the capability to enable a consumer to view it as indicative of trade origin, so much so that the consumers can perceive the difference between the shape in question and other shapes.²²

DESCRIPTIVE MARKS WHETHER DISTINCTIVE -

Trademarks strive to protect the public interest by allowing all traders to utilise descriptive signs

¹⁸Kate Swain, David Ayles, Jon Parker and Stuart C. Ash, “Distinctly Different? Trademarks and the Standards for Distinctiveness” (28 February 2018), available at: <https://gowlingwlg.com> (last visited on June 25, 2023).

¹⁹ibid

²⁰(1998) 8 SCC 1, p. 14

²¹P. Narayan, *Law of Trademarks and Passing Off* 1 (Eastern Law House, Kolkata, 6th edn., 2004).

²²Sana Singh, “India: Trademark Law In India – Types Of Trademarks, Registration Procedure And Acquired Distinctiveness Of Generic Words” (September, 2021), available at: <https://www.mondaq.com> (last visited on June 25, 2023).

and indicators. Trademarks are only excluded on this ground if they consist exclusively of signs, which characterise the goods and services. The mark as a whole must be descriptive in order to be excluded. So marks that are made up of both descriptive and non-descriptive elements may be protected. For a sign to be descriptive, the association between the sign and goods must be sufficiently specific and direct to show that that sign enables the relevant public to identify those goods and services immediately. This test is also applicable for pictures, shapes, colours, etcetera and not just words.

INHERENT AND ACQUIRED DISTINCTIVENESS - AN OVERVIEW WITH CASE STUDY

A trademark's primary purpose is to identify the origin of a product or service for consumers. Thus, a trademark must be able to distinguish one category of goods from another. Distinctiveness affects a mark's eligibility for registration, extent of protection, enforceability, and validity after registration. A mark might be unique from the start or develop distinctiveness through usage over time.

INHERENT DISTINCTIVENESS -

Inherently identifiable marks connect consumers to the product's origin without the need for further explanation. Intrinsic distinctiveness refers to a trademark's lack of defining the nature, character, or quality of a product or service.²³ The less the mark is related to the product it represents, the more inherently it is distinctive. For example, companies like Nike or Adidas deal in sporting merchandise. Their logos and titles have little resemblance to sports-related brands. Inherent distinctiveness may be explained by the following case law -

M/S Kee Pharma Limited v M/S Big M Healthcare & Anr

The Delhi High Court in its judgement of *M/S Kee Pharma Limited v M/S Big M Healthcare & Anr*²⁴ reiterated that the plaintiff has a statutory right to the exclusive use of a registered trademark and the use of the same or a deceptively similar trade mark by an unauthorised person or trader will constitute infringement of the plaintiff's right of exclusive use under the provisions of The Trade Marks Act, 1999. The judgement was given by a single judge bench of Justice G.S.

²³Ayush Agrawal, "What's the Relationship between Descriptiveness and Distinctiveness in Trademarks?" (February 8, 2022), available at: <https://thepalaw.com> (last visited on June 25, 2023).

²⁴(2012) 5 R.A.J.314

Sistani.

Summary of Facts -

- The Plaintiff has been carrying on business of trading of pharmaceuticals and medicinal preparations for past several decades and one of the medicinal preparations marketed by the plaintiff is an anti-inflammatory analgesic drug, which is a combination of Serratiopeptidase & Diclofenac Potassium, under the trademark DISER, which treats pain & inflammation.
- The trademark DISER is a coined and invented mark that has been extensively and commercially used by the plaintiff in the course of trade of medicinal preparations since June 2000. Therefore, the trademark has become distinctive of the source and trade origin of drugs manufactured and marketed by the plaintiff exclusively. Furthermore, the trademark is also registered by the Plaintiff therefore any drug marketed under this mark or any other deceptively similar trademark is likely to cause confusion or deception in the trade.
- The Defendant also carries on business of manufacturing pharmaceuticals preparations and has adopted the identical trademark DISER which is deceptively similar to the plaintiff's trademark DISER structurally, visually and phonetically.
- The defendants are liable to permanent injunctions to protect the public interest, especially as the commodities in question are medicinal preparations and pharmaceuticals.

Judgement -

- **The plaintiff owns the registered trademark DISER, a coined and invented mark with strong inherent uniqueness.** He has been continuously using the said name and has also taken all steps to diligently protect its trad-mark against the unauthorised use of any deceptively similar trademark. The DISER trademark has structural, visual, and phonetic similarities to the plaintiff's trademark.
- The facts of this case reveal that the conduct of the **defendant is mala fide, dishonest, unethical and unlawful and solely motivated to encash upon the goodwill and reputation of the plaintiff's trademark DISER and to earn easy and illegal profits by passing off its medicinal preparations for those of the plaintiff.** The act of the defendant is also likely to tarnish the plaintiff's goodwill and reputation and constitutes an act of passing off unfair competition.

- The acts of the defendant constitute violation of the plaintiff's statutory rights under Section 29 of The Trade Marks Act, 1999. The defendant is attempting to counterfeit the product of the plaintiff and pass off its goods as that of the plaintiff. This not only causes loss of profits to the plaintiff, but results in inferior medicines made available to the public at large who are deceived by the conduct of the defendant.
- The plaintiff is entitled to a decree of permanent injunction against the defendant and is also entitled to the damages to the tune of Rs.5.0 lacs.

ACQUIRED DISTINCTIVENESS -

With the passage of time a trademark gets strengthened and a particular mark gets registered or mentally associated in the minds of the consumers as distinctive of the product and its source.²⁵ Acquired distinctiveness, unlike inherent distinctiveness, requires time, often taking place over a period of several years in the majority of cases. The most well-known example of a descriptive mark is "Coca-Cola" for a cola drink made using ingredients from the coca plant. Taken on its own, this mark is descriptive. But the "Coca-Cola" mark became so closely associated with a particular brand of beverage that it acquired distinctiveness. Acquired distinctiveness may be explained by the following case law -

Ishi Khosla v. Anil Aggarwal

The Delhi High Court in its judgement of *Ishi Khosla v. Anil Aggarwal*²⁶ settled the principle of "acquired distinctiveness". The Court ruled that a trademark's uniqueness does not require that the connected goods be in the market for a specific period of time. A trademark's uniqueness can develop quickly and varies based on individual circumstances. There is no fixed time-frame for a trademark to have developed distinctiveness. The judgement was given by a single judge bench of Justice A.K. Sikri.

Summary of Facts -

- The plaintiff Mrs. Ishi Khosla founded 'M/s. Whole Foods', a sole proprietorship firm which carried on the business of producing and retailing 'healthy and healing' food products in India.

²⁵P Narayan, *Law of Trademarks and Passing Off* 1 (Eastern Law House, Kolkata, 6th edn., 2004).

²⁶(2007) 34 PTC 370 Del.

- The Plaintiff started using the trademark “Whole Foods” in the year 2001. The plaintiff has extensively utilised the trademark “Whole Foods” in her trade/business, and it is well recognized as indicating her source with regard to food stuff. The proprietor claims ownership of the trademark “Whole Foods” in India based on prior adoption, extensive use, and reputation in trade. The trademark is recognized as a symbol of quality and ethical business practices. On July 27, 2004, she applied for registration of this trademark.
- The defendant claimed registration of the trademark “DIET WHOLE FOODS”, which differs from “Whole Foods”. The defendant’s trademark, which includes the word “DIET”, differs significantly from the plaintiff’s in terms of description and phonetics.
- The defendant argued that the plaintiff’s trademark is not protected since it is a descriptive mark that refers to the quality of the goods. The term “WHOLE FOODS” is widely used in trade and is being used by a variety of businesses. A trademark can only be protected if it has secondary value, which is not the case here. It was also argued that the mark of Defendant “DIET WHOLE FOODS” is not the same or identical or deceptively similar to the trademark of the plaintiff and, therefore, no action for infringement can be brought.

Judgement -

- The Court determined that the plaintiff’s use of the term “WHOLE FOODS” has become synonymous with her products as a result of her consistent efforts to protect it. **It’s not required for a product to have been on the market for a long time to gain secondary meaning or distinctiveness.** A captivating and appealing new idea can quickly gain popularity among consumers.
- The defendants’ products were launched approximately 3 years after the Plaintiff’s, allowing them to reasonably estimate the benefits obtained. The Plaintiff’s trademark was cleverly manipulated to include the word “DIET” before it. **Adoption of the similar writing style and packaging, which inevitably leads to confusion is a clear indication of their mala fide intention.**

IMPORTANCE OF TRADEMARK DISTINCTIVENESS

A trade mark ensures the identity and origin of goods or services, allowing consumers to easily differentiate them from others with different origins without any confusion. Trade mark distinctiveness is a crucial concept and of much significance in trade mark law in all jurisdictions.

- **Distinctiveness grants legal protection** - Trademarks are only protectable if they are considered “distinctive”. In order for the trademark to perform its function, it must be distinctive to the consumer. The more distinctive a mark is, the more likely it will be granted trademark protection.
- **Distinctiveness allows consumers to base their purchasing decisions** - A trademark’s distinctiveness captures the consumer’s attention and makes products stand out. It acts as an indicator of source and quality of a product. This in turn creates a relationship of trust with customers, which enables a business to establish a loyal clientele.
- **Distinctive marks are registrable** - Registration provides exclusive rights to the registered owner to prevent third parties from marketing identical or similar products or services under an identical or confusingly similar trademark. The necessary requirement for a trademark to be registered is its quality of distinctiveness. Thus, a distinctive trademark is easily registrable and gives a brand, business or company the right to sue for infringement in a court of law.
- **Distinctiveness is the basis to create a company’s brand and reputation** - A distinctive trademark stands out to a consumer and enhances the goodwill of a business, brand or company. For example, Lamborghini is an expensive brand of a luxury sports car. If a manufacturer of a less expensive car decides to affix the Lamborghini brand on to it, it will cause a huge loss of reputation to the original manufacturer. Discerning buyers of the luxury products would not be able to associate the brand with a luxury, high-end product and desist from buying it. Naturally, it’s in the interest of Lamborghini to ensure that no other manufacturer comes up with a cheap product of the same name and logo.

CONCLUDING OBSERVATIONS

Following are a few key observations have been made after analysing the article -

- **Registration of trademarks provides legal security to a business therefore a trademark must be distinctive** - When a trademark is registered, a company, brand or business has the legal right over the mark. If another person uses the registered trademark without permission, the owner of the trademark may seek legal recourse. Thus, a trademark must be registered to provide legal protection to a brand and for this purpose a

trademark must be distinctive in nature without which it may not be accepted for registration.

- **Colour marks, shape marks and 3-D marks are difficult to be registered as trademarks** - Such marks must be capable of independently identifying the goods and services of the undertaking in order to be registered. A colour trademark is not generally inherently distinctive as consumers must be taught that a certain colour is an indicator of specific goods or services and such originates from a particular undertaking. Consumer's identification of a shape mark with a specific brand may not be sufficient to demonstrate that a shape mark, when isolated from any other mark, alone denotes the origin of the goods for the purposes of trademark registration. Additionally, the examination and ascertainment of distinctiveness of shape or three-dimensional marks, is also relatively challenging.
- **Lack of inherent distinctiveness does not mean a mark cannot acquire distinctiveness** - A mark will be considered inherently distinctive if it can direct consumers to the origin of the product without being taught. Therefore, although a mark is not inherently distinctive and may look descriptive, it is possible that it will acquire the quality of distinctiveness over time.
- **Distinctiveness can also be lost** - lack of proper protection may lead to a mark becoming generic and its ability to distinguish goods or services as being from a particular undertaking will decline.

RECOMMENDATIONS

The following are a few recommendations based on an analysis of the article which may modify and improve distinctiveness of trademarks -

- **The possibility of registering a colour mark, shape mark and 3-D is not improbable** - A colour trademark will never be considered inherently distinctive however, a lack of inherent distinctiveness does not necessarily conclude that a mark cannot acquire distinctiveness over time. Before analysing the distinctiveness of a shape or 3D mark, it is important to find out if the target audience recognises it as a generic example of a

specific product. Finding out if the relevant consumer recognises an indicator of origin of these characteristics or merely sees it as serving a functional purpose or having an all-around beautiful design.

- **Use of fanciful, coined or arbitrary terms to strengthen trademark protection** - Brands must avoid marks such as a common advertising slogan or a figurative mark consisting only of a graphic design which the public would perceive as mere decoration. They must invent new words, combine or use common words that have no direct connection to the products or services they offer to create a unique and distinctive trademark. Examples include Google, Xerox, Apple (computers), and Amazon (e-commerce). This approach creates an unexpected association and enhances distinctiveness.
- **Acquired distinctiveness has to be proved** - If a mark is devoid of an inherent distinctive character, it can only be registered if the applicant can prove acquired distinctiveness of the mark through use. When it comes to proving acquired distinctiveness, market survey may be used as evidence in several cases.
- **Branding through a psychological connection** - Trademarks traditionally focus on visual distinctiveness, but modifying the concept could emphasise an emotional connection. Brands that evoke strong emotions and connect with consumers on a deeper level tend to be more memorable. Creating trademarks that elicit specific emotions or values can enhance distinctiveness and brand loyalty.

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