



# Making your mark and protecting your brand online in Canada

## Part three - Effective registration and branding strategies

October 2020

---

**In short:**  
"A trademark somehow must be recognizable, identifiable, and different from other marks."

### **Title: Distinctiveness objections: Navigating a new frontier**

#### **Key takeaways**

- The inherent distinctiveness of a mark refers to its originality;
- A trademark is inherently distinctive when nothing about it refers the consumer to a multitude of sources;
- Trademarks having "no inherent distinctiveness" are considered not registrable, but those possessing a "low, some, or high degree of inherent distinctiveness" are considered registrable;
- A trademark with no inherent distinctiveness may acquire distinctiveness through continuous and long-standing use in Canada. The applicant has to show evidence that its trademark has become known to consumers;
- Consider avoiding adopting a trademark that consists only of one or two letters, laudatory words, phone numbers, surname or full name, geographic locations, generic words, phrases or designs, clearly descriptive or deceptively misdescriptive wordings, etc.;
- Stay away from trademarks that other traders should be able to use in the ordinary course of their businesses in association with the same goods or services;
- Before choosing a trademark ask your IP consultant for a registrability opinion in order to be aware about any red flags.

#### **Key contact**



**Mihaela Dumitrean**  
**Trademark Agent**

Tel +1 514 847 4246

[mihaela.dumitrean@nortonrosefulbright.com](mailto:mihaela.dumitrean@nortonrosefulbright.com)