

## PRACTICAL GUIDE HOW TO CHOOSE YOUR TRADEMARK ?

*This practical guide is for informational purposes only and is not a comprehensive presentation of all the trademarks solution. It does not constitute legal advice.*

Have you recently developed a new product or service? Do you want to create a trademark for the product or service that you offer? If yes, the following guidelines will provide useful information about choosing a trademark.

### ➤ IS YOUR PROPOSED TRADEMARK LAWFUL?

Article L711-1 of the Intellectual Property Code specifies that a trademark can be made up of words, logo, graphic elements, or audible signs. Often, effective trademarks are created from a combination of several components.

Some components, like the coat of arms of the State, are forbidden as trademarks. Additionally, the trademark cannot interfere with public policy, nor can the trademark go against public morals.

### ➤ IS YOUR PROPOSED TRADEMARK DISTINCTIVE?

The chosen trademark must be unique. Its purpose is to permit consumers to recognise the trademark and associate it with the product or service that you offer. Article L711-2 of the Intellectual Property Code specifies that the sign you chose as a trademark cannot be made up only of phrases that describe the product or service.

Indeed, although it may be possible to acquire a distinctive nature through the use of the trademark, a sure bet is to create your trademark using words that do not appear in the dictionary. Combining a word with an unrelated graphic or another, unrelated word also creates a very effective trademark.

Examples of weak or unacceptable trademarks include: necessary phrases that may be restrictive to others (1StopShop, 24HOURS), laudatory phrases (Number1Quality), graphics belonging to the public domain, or generic names.

Lastly, it is imperative that you consider your potential trademark's meaning or perception internationally. Certain made-up words may actually exist and have different meanings in other languages. Since you never know how far-reaching your brand may become, it is important to do consider international meanings at the outset.

### ➤ IS YOUR PROPOSED TRADEMARK AVAILABLE?

Finally, it is not enough that your potential trademark is lawful and distinctive. Your potential trademark must also be available. Article L711-4 of the Intellectual Property Code explains that if an existing trademark, regardless of whether it is registered, it cannot be reused.

If your proposed trademark could be confused with an existing trademark, it is unavailable, even if the two are not identical. Very well-known brands or slogans are more widely protected than lesser-known ones.

Unavailable trademarks include other company names, names of certain geographic areas (Appellations d'Origine Protégée), copyright protected works or brands, images representing a third party, and titles of nobility.

Trademarks can be registered in France for ten years with the INPI (National Institute for Industrial Property). Trademarks can be registered internationally with the World Intellectual Property Organization. After the ten year period, the trademark can be renewed an unlimited number of times.

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