

Origin of Trade Mark Protection

1. Registered Trade Mark, Sec. 4 No. 1 MarkenG

Trade mark protection is established by registration of the sign in the trade mark register maintained by the DPMA.

The registration procedure is governed by Sec. 32 et seq. MarkenG.

2. Use Mark, Sec. 4 No. 2 MarkenG

Even without registration, trademark protection can arise through use of the sign in the course of trade if the sign has acquired public recognition as a trade mark within the relevant public.

The requirements for public recognition are less stringent than those for the acquisition of distinctiveness under Sec. 8 (3) of the MarkenG. A sign has public recognition if a not insignificant part of the target public establishes a connection between the sign and a certain company and recognizes the appearance of the sign.

The degree of awareness (“Verkehrsbekanntheit”) depends on the distinctive character of the sign. The weaker this is, the higher the degree of recognition must be. The *simple recognition by the public* required for normally distinctive signs is given with a degree of recognition of approx. 20 %. In order not to circumvent Sec. 8 (3) MarkenG, a *qualified recognition* is required to overcome the grounds for refusal of Sec. 8 (2) No. 1, 2, 3 MarkenG, which is regularly not less than 50 %. The grounds for refusal under Sec. 8 (2) No. 4-10 MarkenG also apply to use marks (BGH, GRUR 2013, 729 para. 18 - *READY TO FUCK*).

3. Well-known Mark, Sec. 4 No. 3 MarkenG

Trade mark protection without registration also arises for well-known marks from notorious reputation of the trade mark in the domestic market according to Art. 6^{bis} of the Paris Convention.

Well-known means that a trade mark is universally known in the trade. For this, a higher degree of recognition is required than for the reputation of use marks. As a rule, this is considered to be at around 70 %. In contrast to the use mark, domestic use is not required.