

Distinctiveness

1. Abstract distinctiveness, Sec. 3 (1) MarkenG

According to Sec. 3 (1) MarkenG, the sign must be capable of distinguishing of goods or services of one undertaking from those of other undertakings. This is to be determined *independently of any goods or services* and is therefore only to be rejected if such capability can be excluded under all conceivable circumstances.

Examples: An isolated point (".") or overlong character shapes (word or sound sequences).

2. Concrete distinctiveness, Sec. 8 (2) No. 1 MarkenG

According to Sec. 8 (2) No. 1 MarkenG, distinctiveness is required for *a specific product or service*. In contrast to abstract distinctiveness, there is a direct product reference. According to the wording ("any"), a generous standard is to be applied.

Examples of concrete distinctiveness:

