

§ 80-2. Registrability.

A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it

- (1) Consists of or comprises immoral, deceptive or scandalous matter; or
- (2) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; or
- (3) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or
- (4) Consists of or comprises the name, signature or portrait of any living individual, except with his written consent; or
- (5) Consists of a mark which (i) when applied to the goods or services of the applicant, is merely descriptive of them or merely describes one or more of the characteristics, or is deceptively misdescriptive of them, or falsely describes the nature, function, capacity, or characteristics of them, or (ii) when applied to the goods or services of the applicant, is primarily geographically descriptive or deceptively misdescriptive of them, or (iii) is primarily merely a surname; provided, however, that nothing in this subdivision (5) shall prevent the registration of a mark used in this State by the applicant which has become distinctive of the applicant's goods or services. The Secretary may accept as evidence that the mark has become distinctive, as applied to the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this State for the five years preceding the date on which the claim of distinctiveness is made; or
- (6) Consists of or comprises a mark which so resembles a mark registered in this State or a mark or trade name previously used in this State by another and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive. (1903, c. 271; Rev., ss. 3012, 3017; C.S., ss. 3971, 3976; 1941, c. 255, s. 1; 1967, c. 1007, s. 1; 1991, c. 626, s. 2; 1997-476, s. 3.)