

## BRANDING A START UP? STEPS ON HOW TO CHOOSE A TRADE OR SERVICE MARK

*Mfonobong Ukpe*



The intention of every entrepreneur is to enable customers remember them with ease, hence the misconception that their name or mark must be that which best describes their business, products or services.

For the purposes of marking a trade, the use of generic names has been wildly adopted by most businesses particularly within the technology industry and this has been in bid to create an increased web traffic on search engine keywords via the internet.

In our opinion, it is a flawed strategy to adopt a generic or descriptive name for your startup, products or services, which can adversely affect the growth of your business.

According to experts like Selvams, *"the name you select should score high on the degree of protectiveness."* Thus in determining your score, your mark can be fitted into one of the following categories.

### **Coined Mark**

At the top scale of distinctiveness and strength are coined marks. A coined mark is one that is invented solely for the purpose of using it as a trademark. Notwithstanding the fact that it has no meaning apart from its affiliation with a given product or

services. It is a fabricated word, hence the reason it is also referred to as a “**fanciful**” **mark**.

For example, coined marks like KODAK® for photography products, REEBOK® for shoes, “twenty19.com” for internships, “SONY” for electronics and GOOGLE® for Web browser services, are currently operating and protected.

The best advantage of having your startup tailored or marked within the coined mark category, it will be difficult for others to infringe such marks as it is difficult for others to give a plausible explanation for adopting similar marks.

Manifold Solicitors

March 2, 2021

## Coined Marks or Fanciful

-The most potent marks  
- Made-up words  
E.g Kodak, Google etc

*Best choice in branding your startup...*

[www.manifoldsolicitors.com](http://www.manifoldsolicitors.com)

### Arbitrary Mark

This is second on the scale of distinctiveness and strength.

An arbitrary mark is one that has no relationship with your product or service other than its source-identifying function. For example “APPLE®” for computers is an arbitrary mark.

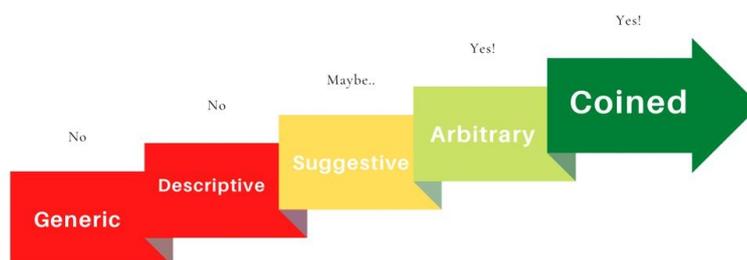
### Suggestive Mark

Suggestive marks are not as distinctive as coined or arbitrary marks, but may still be considered strong marks. A suggestive mark hints at some function or property of the product or service, but does not directly describe it. A customer is required to use a degree of thought or imagination to ascertain the exact nature of the goods. Suggestive marks often include words that personify desirable qualities or characteristics associated with a product or service—such as efficiency, speed, accuracy, comfort or elegance. For example, CARESS® is a suggestive name for body soap and “travelbeta.com” is a suggestive name for travel and hospitality ticket bookings. The mark “travelbeta.com” hints that the service is related to your trip but does not directly describe travel ticket booking services.

## CHOOSING YOUR MARK

*Is it Protectable?*

*How strong is your mark?*



www.manifieldsolicitors.com

### Descriptive Mark

A descriptive mark is one that describes the goods and services for which it is used. These marks are among the least distinctive and weakest marks. You may be tempted to use descriptive marks because you want consumers to immediately know the nature of the product or service upon seeing the mark. For example, “computer store” for a store selling computers and “shoe store” for a store selling shoes. In general it is not possible to protect descriptive marks, however if the mark has acquired distinctiveness or a secondary meaning by extensive and long usage then the same can be protected. For example “mycv.com” is an online portal where users in search of jobs can post their resumes and employers can review the resumes to hire these users. The literal meaning of the phrase “mycv” is “my curriculum vitae” and can be generic in nature. Ordinarily this mark cannot be protected as it is descriptive, however, it now, enjoys protection as it has acquired distinctiveness by extensive and long usage like the case in the United States where it will take at least five (5) years and a great deal of advertising to acquire that distinctiveness. Examples of descriptive marks that have acquired distinctiveness include COMPUTERLAND® for computer store services and VISION WORLD® for optical store services.

### Generic Mark

A generic mark is one that is the common name of the goods and services and generally has a dictionary meaning.

However, the generic or common name of a product or service can never function as a trademark. For example, these terms; “grocery store”, “pen” or “facial tissue” can never function as a service mark for services and trade mark for products.

For purposes of emphasis, generic marks cannot be registered as trademarks and enjoy no protection.

### *A trademark can also become generic due to improper use.*

A word that initially functions as a trademark can lose its trademark significance and become a generic term if consumers improperly use the mark in a generic sense to identify a particular type of product or service regardless of source. This phenomenon is sometimes called “genericide.” The former trademarks “kerosene,” “escalator,” “aspirin,” “linoleum” and “kitty litter” all met this fate. While a trademark owner may initially be delighted if the public adopts its trademark as the common name for the

product or entire product category, the result may be loss of control over the use of the mark and loss of trademark rights. Consistent and proper use of trademarks and consumer education can help combat genericide. For instance, the Xerox Company has successfully protected its XEROX mark from genericide by investing in special advertising to educate the public about the proper use of the mark.

Without further ado, it is exigent that you consider the above instances in the selection of a strong mark for your startup, product or service. The results of properly branding your startup will be worth the overwhelming time and intellectual energy invested in branding your startup.

## Manifold Solicitors

### Key Contacts



Mani Ojeah  
Managing Partner  
M: +234 9093857000  
Email: [immanioj@manifieldsolicitors.com](mailto:immanioj@manifieldsolicitors.com)



Mfonobong Ukpe U.  
Head, Corporate Strategy & Commercial LP  
M: +234 9093857125  
Email: [mu.unanaowo@manifieldsolicitors.com](mailto:mu.unanaowo@manifieldsolicitors.com)

For further information about the firm, its seminars/events, practice areas, client briefing notes and relevant publications, please visit [www.manifieldsolicitors.com](http://www.manifieldsolicitors.com). This is a publication of Manifold Solicitors and it is for general information only. No part of this publication should be adopted as a legal advice. For arising interests, please seek proper legal counseling given the circumstances.



**Manifold** Solicitors

Lagos - Plot 7 Block 52a,  
Omorinre Johnson Street, Lekki  
Phase 1 Lagos

+234 9093857000  
[info@manifieldsolicitors.com](mailto:info@manifieldsolicitors.com)