

MARQUES

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The essay discusses the meaning of generic terms and descriptive designations under German and European law. Examples such as "Tempo" for tissues and "Jeep" for off-road vehicles illustrate how widespread usage can erode the distinctiveness of a brand. While high brand recognition may seem advantageous, it can lead to the loss of trademark protection, which creates potential challenges for trademark holders. The legal frameworks work in two ways: firstly, they prevent the registration of generic terms and descriptive designations but also declares formally registered trademarks as expired under certain requirements. Additionally, the essay suggests potential strategies for trademark holders to protect their brands from becoming genericized or invalidated. In the process of analyzing the relationship between the barriers to registration, it has been underlined that the legislature initially attributed original areas of application to the regulations, but these increasingly overlap in the interpretation by European and German case law. The essay examines court decisions which lead to a barrier to registration or decline of a trademark and stated that most facts fulfilling the more specific situation of becoming a generic or descriptive term were rather subsumed under the lack of concrete distinctiveness (§ 8 (2), Nr. 1 MarkenG). The raised question of whether the generic terms and descriptive designations (§ 8 (2), Nr. 2, 3 MarkenG) still have their own area of application in practice could be answered in such a way that the courts sometimes emphasize their significance alongside the concrete distinctiveness, but for procedural reasons, they often do not address the difference between those barriers to registration. In this context, different approaches were discussed to enlarge the area of application of generic terms and descriptive designations to fulfill the intention of the legislator, but it was ultimately stated that a new regulatory technique is not necessary because the practical effects are minimal. It is generally not relevant why trademark protection is denied, especially since there is equivalence between the barriers to protection. Only for trademark owners can the reason for the denial of protection be relevant in order to protect themselves preventively. Especially in connection with the recognition of trademarks by the public, it has been shown that the transitions between the investment interest of the trademark owner and the development into a generic term are fluid. Finally, it was concluded that clearer regulations would lead to more legal certainty and trademark owners would have clearer guidelines on the reaction from national trademark offices they can expect.

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