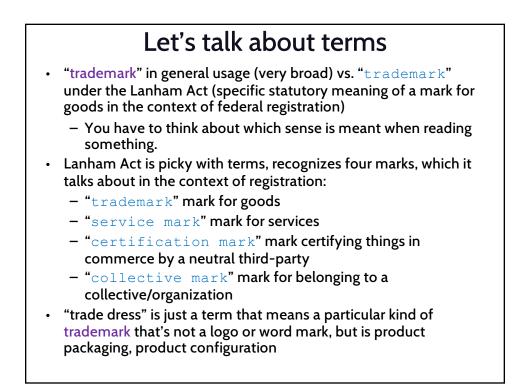




inherently distinctive	fanciful arbitrary suggestive		misdescriptive	inherently distinctive product packaging	
can acquire distinctiveness	merely descriptive	primarily geographically descriptive	deceptively misdescriptive	non-inherently distinctive product packaging product design color	primarily a surname
unprotectable	generic	primarily geographically deceptively misdescriptive	deceptive	functional	names/likenesses of living people without consent gov't symbols





















The need for distinctiveness

- Whether to be registered on the principal register under the Lanham Act (§ 2), or
- whether to be protectible under the common law or 43(a) of the Lanham Act
- a mark must be distinctive!
- It is only by being distinctive that it can signify a <u>source</u>.
- To be distinctive, marks can either be inherently distinctive or can acquire distinctiveness.

Two ways to be distinctive

- "First a mark is inherently distinctive if '[its] intrinsic nature serves to identify a particular source.'"
- "Second, a mark has acquired distinctiveness, even if it is not inherently distinctive, if it has developed secondary meaning, which occurs when, "in the minds of the public, the primary significance of a [mark] is to identify the source of the product rather than the product itself."

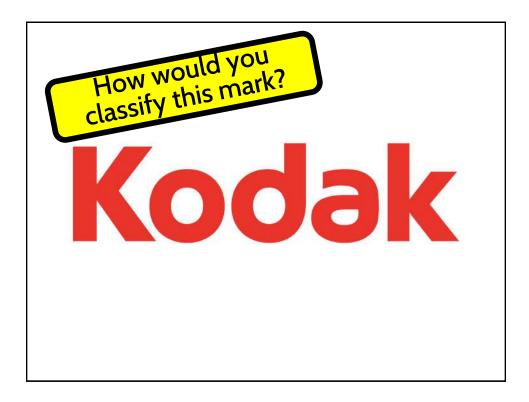
Wal-Mart v. Samara Brothers (U.S. 2000) (citing Inwood Labs v. Ives Labs (U.S. 1982))

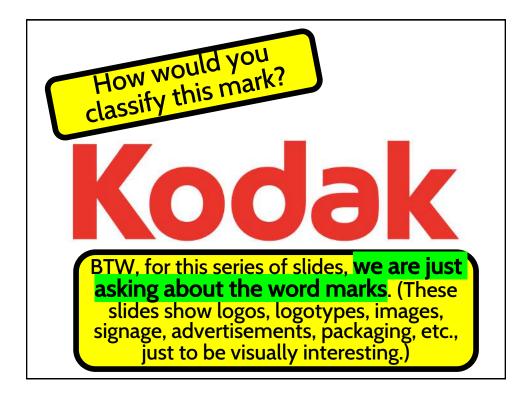
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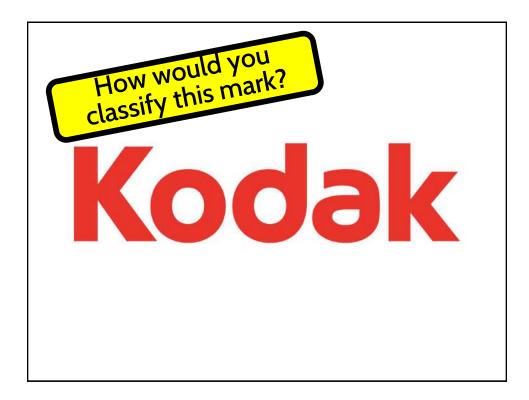
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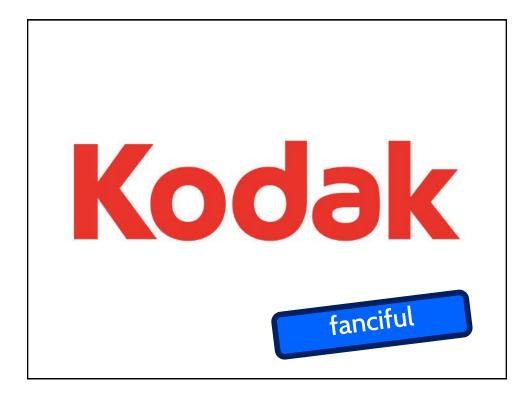




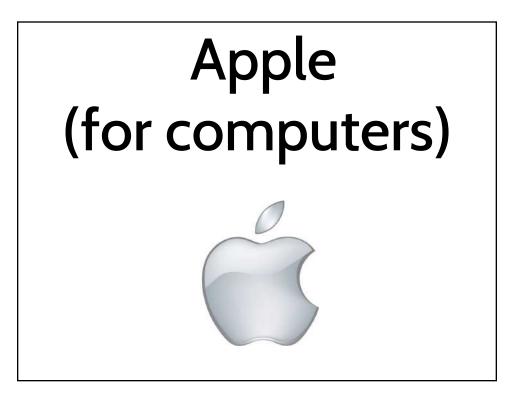
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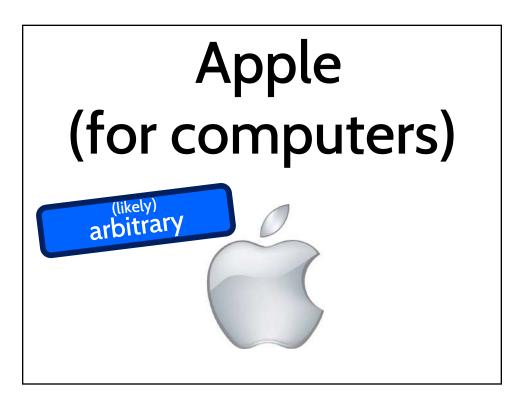






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