

# **The Distinctive Function of Trademark**

## **Abstract**

The main aim of this thesis is to define the trademark, the functions it performs, and thoroughly analyse the distinctive function, especially its manifestations in law and decision-making practice. In addition to scientific literature, it is based on decisions of the Industrial Property Office, EUIPO and the Court of Justice of the European Union in particular.

The introductory part is devoted to the trademark as a right to a sign, focusing on its history, definition and basic principles. In order to better understand trademark law, it also briefly defines other rights to signs.

The second chapter deals with the various functions of the trademark, namely the distinctive, prohibitive, competitive, assuring and promotional functions.

The third part is focused on distinctive character, especially its relation to distinctive function and the difference between inherent and acquired distinctive character. It also categorizes signs according to the degree of distinctive character and analyzes the impact of use on the distinctive character of a trademark, namely enhanced distinctiveness, good reputation and general renown, and their demonstration in opposition proceedings.

The fourth chapter deals with the legal regulation of refusal to register a trademark due to lack of distinctive character and assessment of registrability of individual types of trademarks. Emphasis is placed in particular on the factors leading to the refusal of the trademark and a sufficient degree of distinctive character for registration. The required distinctive character according to the type of trademark is demonstrated on current examples from domestic and European practice.

The final chapter concerns the requirements for differences between trademarks of unrelated entities. It analyzes visual, phonetic and semantic similarity, assessment of similarity of goods and services and overall evaluation of likelihood of confusion, with emphasis on the case law of the Court of Justice of the European Union.

**Key words: trademark, distinctive function, distinctiveness, likelihood of confusion.**