

# *Top Tobacco v. N.A. Operating Co.*

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# Trademark – Registration

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- Can get common law rights from use in commerce
- Why register?
  - Prima-facie case of validity
  - Prima-facie case of ownership
  - Constructive nation-wide use
    - Protection typically limited to geographic location of use
  - Obtain priority
    - Senior versus junior user
  - Enforcement benefits

# Trademark – Registration

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“No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it—

(a) Consists of or comprises immoral, deceptive, or scandalous matter . . . or a geographical indication which, when used on or in connection with wines or spirits, identifies a place other than the origin of the goods

(b) [flag of U.S., state, or foreign country]

(c) [living person w/o consent or dead president while widow alive, w/o widow’s consent” Lanham Act § 2



# Trademark – Registration

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“(d) Consists of or comprises a mark which so resembles a mark . . . as to be likely, when used on or in connection with the goods of the applicant, to cause confusion

(e) Consists of a mark which

(1) when used on or in connection with the goods of the applicant is merely descriptive . . . ,

(2) when used on or in connection with the goods of the applicant is primarily geographically descriptive of them, except as indications of regional origin may be registrable under section 1054 of this title,

(3) when used on or in connection with the goods of the applicant is primarily geographically deceptively misdescriptive of them,” Lanham Act § 2

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“(e) Consists of a mark which . . .

(4) is primarily merely a surname, or

(5) comprises any matter that, as a whole, is functional.

(f) Except as expressly excluded in subsections (a), (b), (c), (d), (e)(3), and (e)(5) of this section, nothing in this chapter shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant’s goods in commerce.” Lanham Act § 2