

Is the Frontier Closing?: Registration Rates of Frequently Used Words on the PTO's Trademark Register

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American trademark law has long operated on the assumption that there exists an inexhaustible supply of possible trademarks. With respect to word marks in particular, the law has assumed that there will always be a reasonable supply of preexisting words ripe for exploitation as trademarks and that in any case trademark adopters can simply coin new words, the supply of which is assumed to be effectively infinite, to serve as trademarks. In this paper, we present empirical evidence that fundamentally challenges these assumptions. We use the U.S. PTO's recently released Trademark Case Files Dataset, consisting of information on 7.4 million trademark applications at the PTO between 1870 and 2014, to show the surprisingly high proportion of English words already registered as trademarks in the U.S. and the limited availability of possible coinages not already identical or similar to registered word marks. The paper explores the implications for trademark law and policy of this closing of the frontier of trademarks.