

USA: In re North Carolina Lottery, United States Court of Appeals, Federal Circuit, No. 2016-2558, 10 August 2017

Kluwer Trademark Blog

September 26, 2017

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*Please refer to this post as: Mark Engstrom, 'USA: In re North Carolina Lottery, United States Court of Appeals, Federal Circuit, No. 2016-2558, 10 August 2017', Kluwer Trademark Blog, September 26 2017, [http://trademarkblog.kluweriplaw.com/2017/09/26/usa-re-north-carolina-lottery-uni-
ted-states-court-appeals-federal-circuit-no-2016-2558-10-august-2017/](http://trademarkblog.kluweriplaw.com/2017/09/26/usa-re-north-carolina-lottery-uni-
ted-states-court-appeals-federal-circuit-no-2016-2558-10-august-2017/)*

The Trademark Trial and Appeal Board did not err in refusing to register the trademark FIRST TUESDAY for lottery games and services, the U.S. Court of Appeals for the Federal Circuit has ruled. According to the court, the mark described a feature of the applicant's goods and services: scratch-off lottery tickets that the applicant (the North Carolina Lottery) offered on the first Tuesday of every month. Consequently, the mark was "merely descriptive" and thus not eligible for registration absent "acquired distinctiveness." Because the applicant did not argue that the mark had acquired distinctiveness through secondary meaning, the refusal to register was affirmed (In re North Carolina Lottery, August 10, 2017, Prost, S.).

A full summary of this case has been published on [Kluwer IP Law](#).