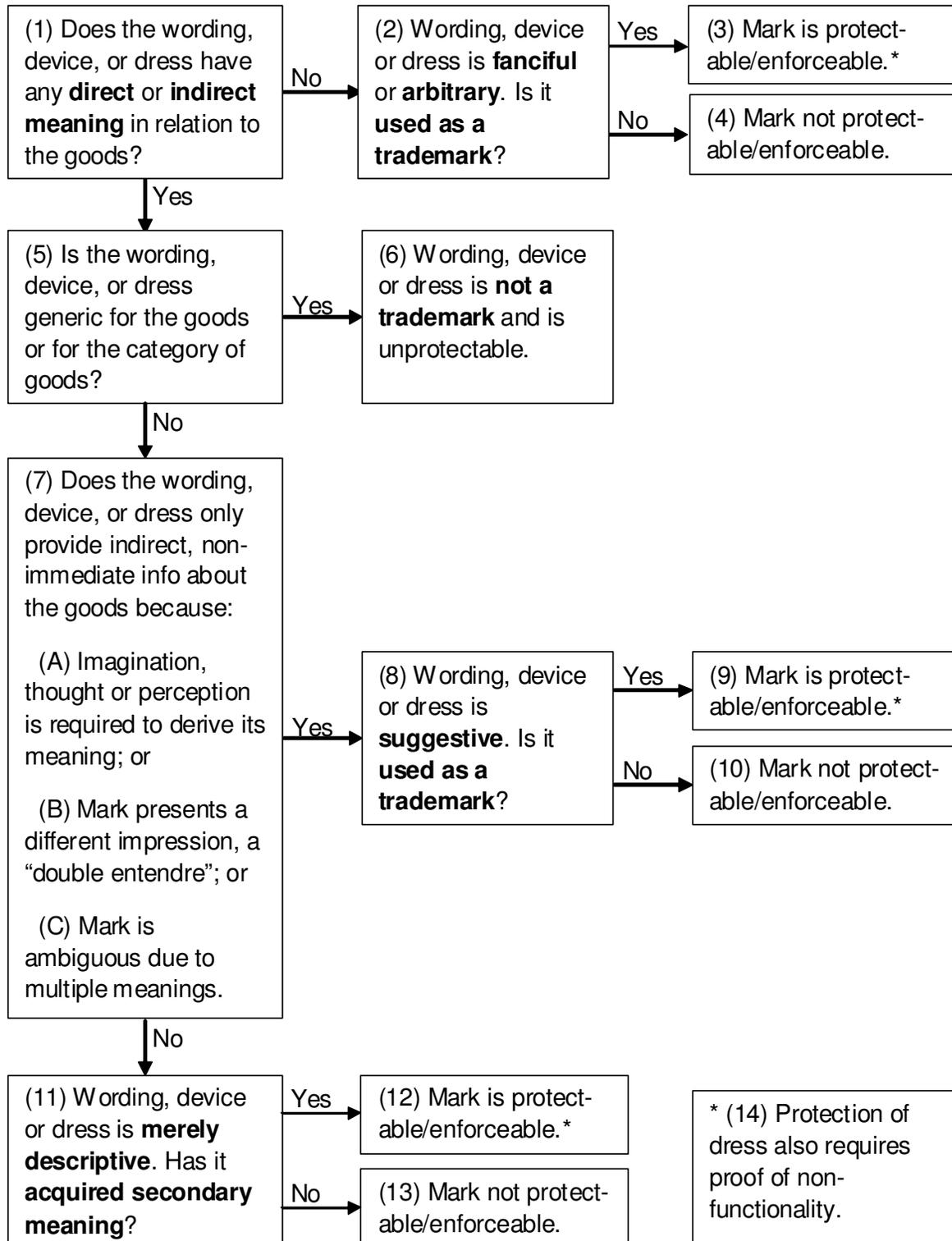


## Scenario One

The web site *LawSchoolCheatSheets.com* offers the following chart for assessing whether a purported mark or trade dress is protected against infringement and can be enforced:



The chart uses the word “device” to refer to graphic elements used in a logo, with or without additional wording. The chart uses the word “dress” to refer to trade dress in all its forms, as well as to colors claimed to be a trademark.

Q1. What is the difference between options (B) and (C) in Box 7? Briefly describe one or two cases (court or TTAB) exemplifying each of these theories.

*Please answer in a blue book or in the exam software, referring to Q1.*

Q2. Box 7 is missing an argument often used successfully to distinguish suggestive marks from descriptive ones. What is that theory? Briefly describe one or two cases (court or TTAB) applying this theory.

*Please answer in a blue book or in the exam software, referring to Q2.*

Q3. Is the chart correct in requiring use of fanciful, arbitrary, and suggestive marks (Boxes 2 and 8) before such marks can be protected? Briefly discuss whether the chart should provide, in the alternative, that rights in such inherently distinctive marks can be enforced against third parties once an intent-to-use application has been filed.

*Please answer in a blue book or in the exam software, referring to Q3.*

Q4. The chart’s treatment of trade dress might be misleading. What edit should be made (or what footnote should be added) to Boxes 1 and 7 to conform to current Federal law, and why?

*Please answer in a blue book or in the exam software, referring to Q4.*

Q5. Some might argue that another box should be inserted between numbers 2 and 3, 8 and 9, and 11 and 12. The box would ask whether the mark actually is “distinctive in the marketplace.” Does such a box belong in this chart? Briefly explain why or why not.

*Please answer in a blue book or in the exam software, referring to Q5.*