

DECISIONS OF THE QUARTER

Important Decisions of the Boards of Appeal – 4th Quarter 2017

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Menu

- Absolute Grounds of Refusal
 - Parties?
 - Acquired Distinctiveness
 - Bad faith
- Relative Grounds of Refusal
 - CP 5
 - Some wine
- Proof of use
 - Used together with other elements

Absolute Grounds of refusal?

A glass of *Prosecco* (PDO-IT-A0516)

[R 2238/2016-5](#)

EUTMA

SKINNY
PROSECCO

Cl. 33, 35

Nutrition Facts

Serving Size: 1 glass (3.5 fl oz)

Amount Per Serving

Calories 69

Calories from Fat 0

% Daily Values*

Total Fat 0g 0%

Saturated Fat 0g 0%

Polyunsaturated Fat 0g

Monounsaturated Fat 0g

Cholesterol 0mg 0%

Sodium 6mg 0%

Potassium 97mg

Total Carbohydrate 2g 1%

Dietary Fiber 0g 0%

Sugars 1.01g

Protein 0.08g

Vitamin A 0% Vitamin C 0%

Calcium 0% Iron 2%

* Percent Daily Values are based on a 2000 calorie diet.
Your daily values may be higher or lower depending on
your calorie needs.

Let's party

[R 0105/2017-4](#)

EUTMA

Fiesta
MEXICANA

Cl. 29, 32, 43



A curse

[R 0601/2017-4](#)

EUTMA

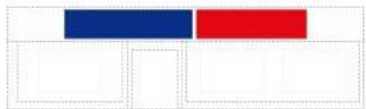
Fuck Winter

Cl. 25

And again some position marks

[R 1313/2016-5](#)

EUTMA



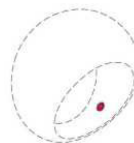
Cl. 35 (retail services)

Description:

... consists of two elongated, adjacent coloured areas of similar length, a red area on the right and a blue area on the left. Both areas are arranged above the entrance area of a shop and/or the display windows thereof.

[R 2151/2016-5](#)

EUTMA



Description:

... consiste nella posizione di una piccola pietra di colore rosso, di forma circolare, con diametro di 2 mm, incastonata nella superficie interna laterale di un anello come riportato in figura.

Distinctive character – distinctive character acquires through use

[R 2196/2016-2](#)

EUTMA

MUSEU GAUDI

Cl. 9, 16, 41

[R 2197/2016-2](#)

EUTMA

MUSEU ANTONIO GAUDI

Cl. 9, 16, 41

Bad faith

I have never heard about you ...

[R 2153/2015-4](#)

EUTM

MOULDPRO

Cl. 17

Facts:

- EUTM applied in 2011
- Business relation 2001-2006
- E-mail exchange around 2011

[R 0080/2017-2](#)

EUTM

NEYMAR

Cl. 25

Facts:

- EUTM applied in 2012
- Known already since 2006 or only after transfer in 2013?

[R 2371/2016-2](#)

EUTM



ANN TAYLOR

Cl. 14

Facts:

- EUTM applied in 2012
- Bad faith case in MX in 2008

Relative grounds of refusal

CP 5, again ...

R 1019/2016-1

EUTMA



Cl. 29

Earlier TM_(EU)



Cl. 29

R 1936/2016-2

EUTMA



Cl. 35, 41, 43

Earlier TM_(EU)

B-HOTEL

Cl. 43

CP 5, conclusion ...

Coincidence in element with low distinctive character

no LoC unless

- other elements of a lower (or equally low) degree of distinctive character or are of insignificant visual impact and the overall impression of the signs is similar

OR

- overall impression of signs is at least highly similar

Coincidence in element with no distinctive character

no LoC unless

- Signs contain other figurative or word elements which are similar,

AND

- the overall impression of the signs is highly similar or identical

After a second glass wine...

[R 0277/2017-2](#)

EUTMA

Earlier TM_(EU)

MARQUES DE LAIA

MARQUES DE LA VILLA

Cl. 33

Cl. 33

[R 0994/2017-5](#)

EUTMA

Earlier TM_(EU)

VIN DU CHEVALIER

DOMAINE DE CHEVALIER

Cl. 33

Cl. 33

... everything is perfectly clear?

[R 1901/2016-1](#)

EUTMA

PERFECTLY CLEAR

Cl. 32, 33

Proof of use

Use together with other elements

R 1780/2016-5

EUTM

美心

Cl. 6, 16, 20, 25, 26, 28, 29, 30, 35, 38

Examples of use

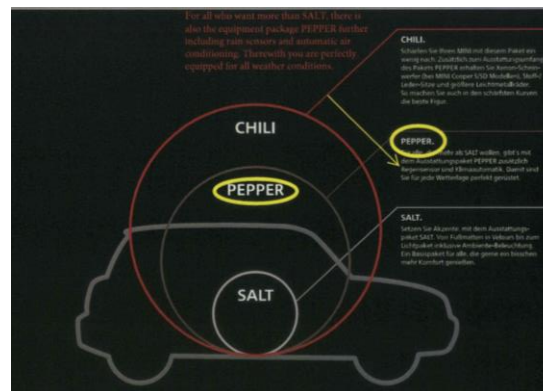


R 2403/2016-4

EUTM

PEPPER

Cl. 12



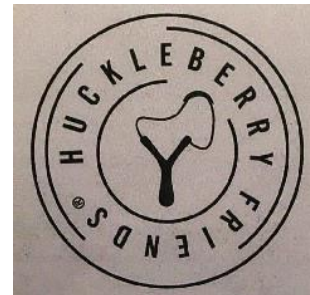
Use which alters distinctive character

[R 0264/2017-2](#)

EUTM

Huckleberry

Examples of use



[R 1753/2016-4](#) & [1802/2016-4](#)

EUTM



Examples of use



Thanks for your attention



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Danke!