

# Understanding the EUIPO's practice regarding deceptive trade marks and its position on EU labelling rules

The case of plant-based food substitutes

Muriel SIRO  
13/06/2023

## PROGRAMME

**50'**  
**Presentation**

**Deceptiveness**  
**Plant-based food**  
**Labelling rules**

**10'**  
**Questions and answers**



1

# DECEPTIVENESS

## Article 7(1)(g) EUTMR

## Deceptiveness

### EUTMR: Article 7(1)(g) EUTMR

The following shall not be registered: *trade marks which are of such a nature as to deceive the public, for instance as to the nature, quality or geographical origin of the goods or service*

### GUIDELINES

Part B Examination, [Section 4 Absolute grounds for refusal](#), Chapter 8  
Deceptive trade marks (Article 7(1)(g) EUTMR)

## Deceptiveness: general principles

- Average consumer: reasonably attentive/not vulnerable to deception
- Actual deceit or a sufficiently serious risk must exist (T-306/20, LA IRLANDESA 1943 (fig.))
- Essential function of a TM cannot be performed (T-29/16 , CAFFÈ NERO)
- Good faith

## Deceptiveness: the test

### THE TEST: Two cumulative criteria

1

Sign conveys a **specific, clear and unambiguous message** regarding the **goods and services** and **non deceptive use is not possible**

2

Actual deceit or sufficiently serious risk of being deceived

## Deceptiveness: the test

**THE TEST:** Two cumulative criteria

1

Sign conveys a **specific, clear and unambiguous message**

**LACTOFREE, Class 5 ([R 892/2009-1](#))**



**ANTICO CASALE, Classes 29, 30 and 35 ([T-327/16](#))**



## Deceptiveness: the test

Reference to  
various goods  
or services



Logical and  
conceptual unit



pinpoint a  
business or  
establishment





## Deceptiveness: the test

1

**Possible non-deceptive use? looking at the goods and services**



## Deceptiveness: the test

1

Possible non-deceptive use? looking at the goods and services

LACTOFREE

For *lactose*



Easy Soda

For *still water*



## Deceptiveness: the test

1

Possible non-deceptive use? looking at the goods and services

No limitation needed

T-306/20, LA IRLANDESA 1943  
(fig.)



For *meat*



## Deceptiveness: the test

2

### Actual deceit/sufficiently serious risk of deceptiveness

Relevant public **relies on the message** and **purchases** goods/services in the **mistaken belief** that **they possess a characteristic which they cannot have**

- ✓ characteristics of the goods and services
- ✓ market reality and consumer habits and perceptions

## Deceptiveness: the test

2

- ✓ **market reality and consumer habits and perceptions**
  - The place where the goods are normally displayed for sale
  - The packaging of the goods
  - The price
  - New products and marketing strategies
  - The consumer's level of attention

## Deceptiveness: the test

2

✓ market reality and consumer habits and perceptions



**RALPH'S COFFEE**

[R 883/2019-2](#)

*tea and chocolate*



*T-shirts; aprons*





**2**

# Plant-based food substitutes

## Plant-based food substitutes

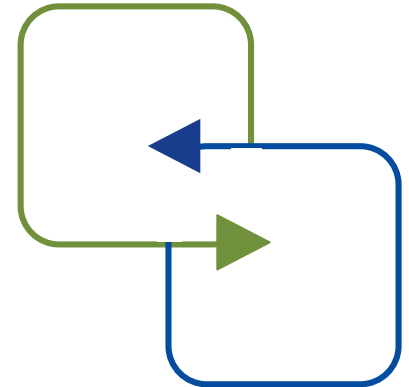




## Plant-based food substitutes

- 46% less meat consumption
- 49% growth in Europeans' consumption of plant-based foods in 2 years
- Total sales: €5.8 billion (+21% since 2020)
- 90% of plant-based-meat consumers were meat eaters

(The NPD Group, 2019)



## Plant-based food substitutes and EUTMs

Dates	Applications <i>'substitute'</i> in Class 29
2018-2023	6 282
2013-2018	2 877
1996-2001	110

**9117**  
EUTM applications

## Plant-based food substitutes and EUTMs

**FEEL BETTER**



**BETTER**

## Plant-based food substitutes and EUTMs

**vegetar!a**



**ZEROFISH**



**PLANT BASED  
ZERO WASTE**

## Plant-based food substitutes and deceptiveness

### Just egg

*plant-based egg substitute; liquid egg substitute; plant-based processed food (Class 29)*



1

Sign conveys a **specific, clear and unambiguous message** regarding the **goods and services** and **non-deceptive use is not possible**

2

Actual deceit or sufficiently serious risk of being deceived

## Plant-based food substitutes and deceptiveness

### Veggiemett

*meat, fish, poultry and game, in particular sausage and ham products; meat extracts (Class 29)*



1

Sign conveys a **specific, clear and unambiguous message** regarding the **goods and services** and **non-deceptive use is not possible**

2

Actual deceit or sufficiently serious risk of being deceived

## Plant-based food substitutes, deceptiveness and lack of distinctiveness

**NEW** MEAT

- NON-DISTINCTIVE
- DECEPTIVE



*Vegetable burgers; Vegetable pate; Prepared vegetable products; Prepared vegetable dishes; Vegetable-based spreads; Vegetable extracts for food; Quick-frozen vegetable dishes; Vegetable-based meat substitutes...*

## Plant-based food substitutes and EUTMs

Vegab<sup>o</sup>tter

**OGRO**  
VEGANO





## Plant-based food substitutes and EUTMs

**It's like milk but made for humans  
(T-253/20)**

**THANKS MILK. WE'LL TAKE IT FROM HERE.**

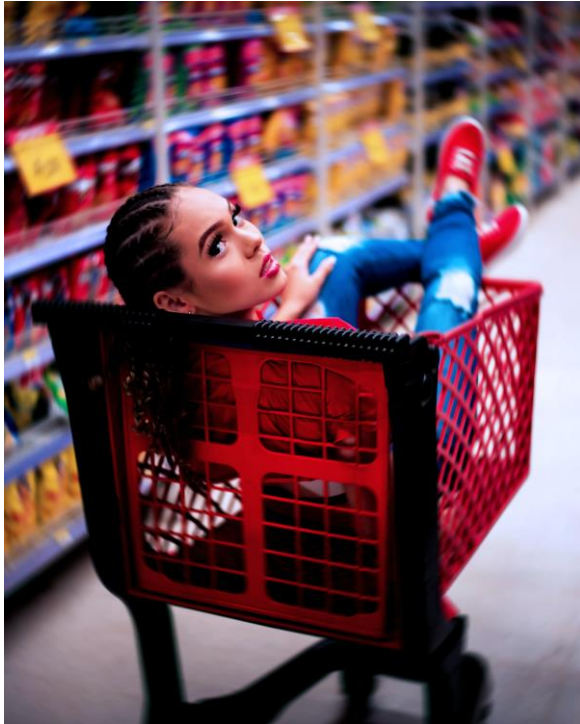




**3**

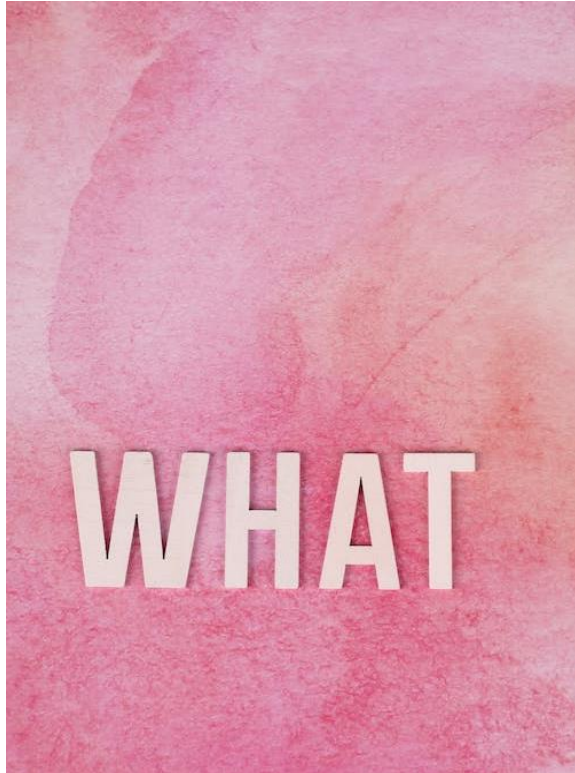
# Labelling rules

## Labelling rules



- Ensure that consumers have access to complete information on the content and composition of products
- In order to protect their health and their interests

## Labelling rules



- Accurate information
- Easy to see and understand
- Not misleading
- Indelible

## Labelling rules

- Strict prohibitions on use of certain elements or features
- Prohibitions on misleading consumers
- Positive guidance
- No explicit reference to TM/explicit references
- EU and national protection



## Labelling rules and food

- **Regulation [1308/2013](#)** establishing a common organisation of the markets in agricultural products
- **[Annex 7, part III](#)** definitions, designations and sales description of products
- **Preliminary ruling in [C-422/16](#)**, Beste Mama



FIRST MILK THE  
REGENERATIVE CO-OP



## Labelling rules and EUTMs

# How are labelling rules and EUTMs related?

- Exhaustive nature of Article 7(1) EUTMR
- No equivalent article to Article 4(3) of the TM Directive
- Explicit reference to external regulations: Article 7(1)(h), (i), (j), (k), (l) and (m) EUTMR

## Labelling rules and EUTMs

### Article 7(1)(f) EUTMR **public policy**



Need of a fundamental interest

### Article 7(1)(g) EUTMR **deceptiveness**



Through the perception of the consumer only  
(BIO-INSECT Shocker [T-86/19](#))



## Labelling rules and EUTMs



Labelling rules are not part of the assessment



Article 7(1)(g) EUTMR deceptiveness



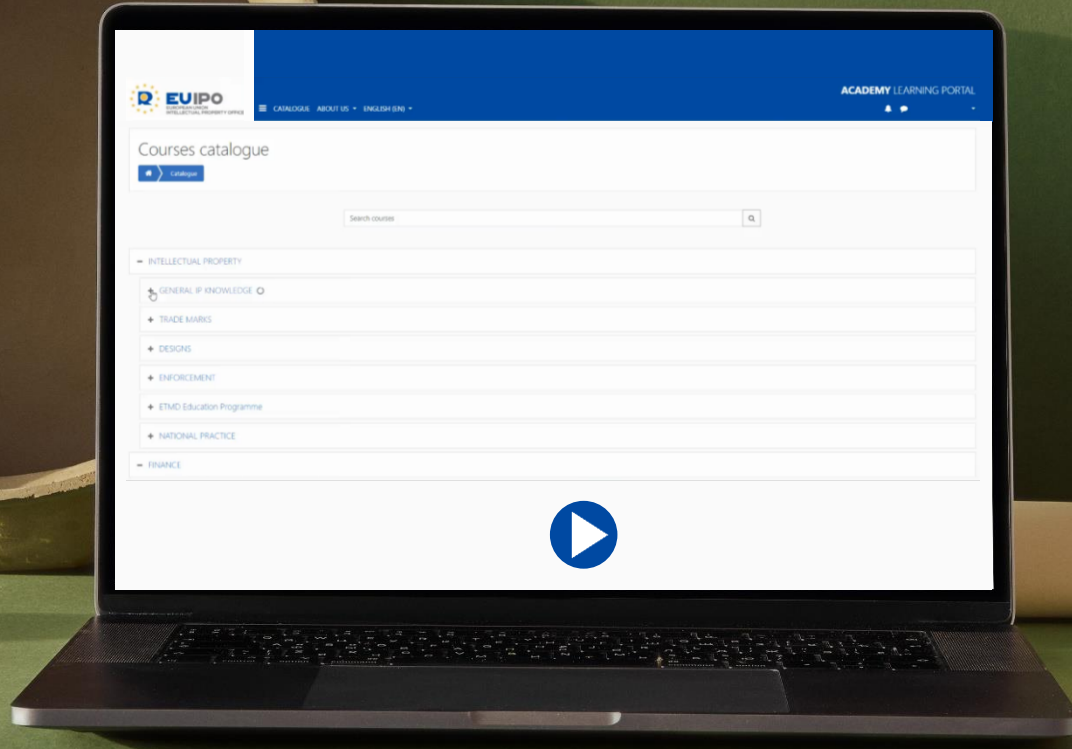
Right to prevent use, not a right to use (Article 137(2) EUTMR)



Revocation, Article 58(1)(c) EUTMR  
EUTM becoming misleading



## Keep in touch with the EUIPO Academy





**EUIPO**

EUROPEAN UNION  
INTELLECTUAL PROPERTY OFFICE

[www.euiipo.europa.eu](http://www.euiipo.europa.eu)



[@EU\\_IPO](https://twitter.com/EU_IPO)



[EUIPO](https://www.linkedin.com/company/euiipo)



[EUIPO.EU](https://www.facebook.com/EUIPO.EU)

**THANK YOU**



**Muriel SIRO,**  
LPS-Legal Department - EUIPO