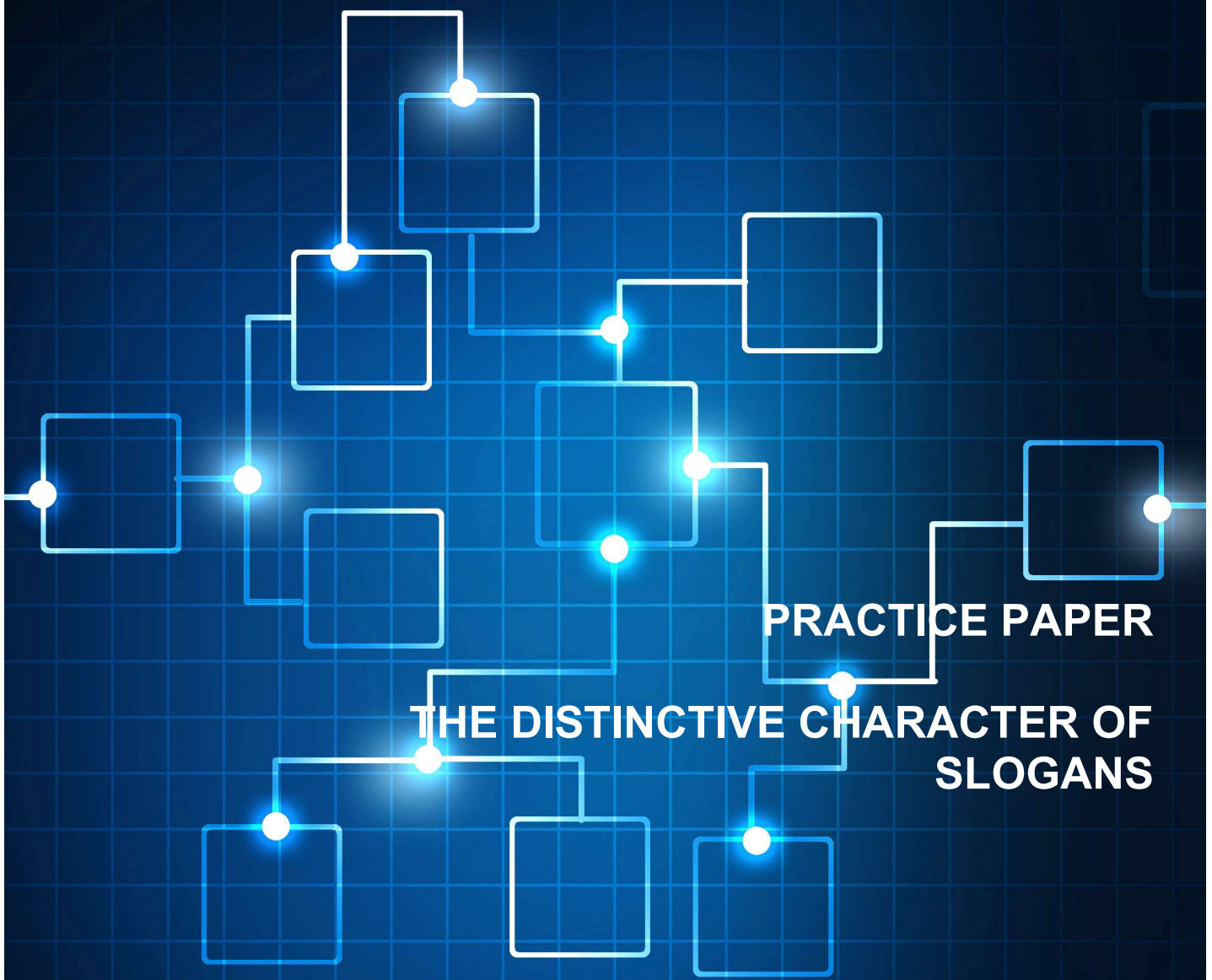


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PRACTICE PAPER

THE DISTINCTIVE CHARACTER OF SLOGANS

State Agency on Intellectual Property
of the Republic of Moldova
AGEPI

Note from the IP Office:

This Practice Paper has been prepared in line with the Common Communication resulting of the Common Practice of Trade Marks developed by the European Union Intellectual Property Network (EUIPN) and aimed to give guidance about the distinctive character of slogans, its concept and a non-exhaustive list of factors for assessing their distinctive character.

This Practice Paper, adopted at national level, is made public with the purpose of further increasing transparency, legal certainty, and predictability for the benefit of examiners and users alike.

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1 INTRODUCTION

1.1 Objective of this document

This practice establishes the concept of a slogan and a non-exhaustive list of factors for assessing the distinctive character of slogans, as well as examples to illustrate the applicable criteria and different outcomes. It serves as a reference for the Office, user associations, applicants, representatives and any other interested persons.

It is made widely available through this Practice Paper with the purpose of making it readily available and easily accessible, providing a clear and comprehensive explanation of the principles on which the practice is based. The principles of the practice are designed to be generally applied and aim to cover the large majority of cases. Although the assessment of whether a slogan is distinctive will be carried out on a case-by-case basis, the principles mentioned in this document serve as guidance for the AGEPI. The examples in this document aim to illustrate the principles of the practice and should be looked at within the context in which they are presented.

1.2 Practice scope

The following topics are **within** the scope of the practice:

- understanding of the concept of slogans and general considerations;
- non-exhaustive list of factors for assessment of the distinctive character of slogans (word marks); and
- examples to illustrate slogans in the English language in subsection 2.3.2.

The following topics are **out** of the scope of the practice:

- assessment of any type of marks other than word marks;
- assessment of any other absolute grounds for refusal other than Article 7(1)(b) of the Law 38/2008;
- assessment of other intellectual property rights such as copyright and their impact on the registrability of a trade mark according to Article 7(1)(b) of the Law 38/2008;
- procedural aspects pertaining to the IPO, such as ex officio examination and cancellation proceedings, etc.;
- acquired distinctiveness through use under Article 7(2) of the Law 38/2008;
- distinctiveness because of a particular placement of the slogan on the goods and services such as the front of a T-shirt ⁽¹⁾; and
- language-related issues (e.g., for the examples that are in English, it will be assumed that they will be understood as a native English speaker would understand them).

2 THE PRACTICE

2.1 Legal framework

According to Article 7(1)(b) of the Law 38/2008, trade marks which are devoid of any distinctive character shall not be registered or, if registered, shall be liable to be declared invalid.

The rationale underlying these provisions lies in Article 5 of the Law 38/2008, which defines inter alia a trade mark as a sign that is capable of distinguishing the goods or services of one undertaking from those of other undertakings. This is the essential function of a trade mark ⁽²⁾ and consequently, the trade mark registration

⁽¹⁾ 12/09/2019, C-541/18, Deutsches Patent-und Markenamt, EU:C:2019:725, § 25-30, 34.

⁽²⁾ 23/05/1978, C-102/77, Hoffmann La-Roche, EU:C:1978:108, § 7. The concept of 'essential function' of a trade mark

should not be granted in favour of a sign that is devoid of any distinctive character.

2.2 The concept of slogan and general considerations

The term 'slogan' is not explicitly defined in the Law 38/2008 nor does the settled case-law provide a definition. However, the interpretation of slogans in the context of EU trade mark law is shaped through case-law from the CJ and the General Court (GC), particularly regarding the assessment of the distinctiveness of such signs. The CJ has provided guidance on how to assess the distinctiveness of a slogan, in particular in its judgments on the slogans 'Vorsprung durch Technik' and 'Wir machen das Besondere einfach' ⁽³⁾.

According to the Cambridge Advanced Learner's Dictionary & Thesaurus ⁽⁴⁾, a 'slogan' is a '*short easily remembered phrase, especially one used to advertise an idea or a product*'. The Cambridge Business English Dictionary ⁽⁵⁾ defines a 'slogan' as '*a short, easily remembered phrase used by an organisation so that people will recognise it or its products*'. Additionally, the Collins English Dictionary ⁽⁶⁾ defines a 'slogan' as '*a distinctive or topical phrase used in politics, advertising, etc.*'

While slogans may have multiple functions, they often serve to promote the respective goods or services. In this regard, the CJ has clarified that slogans may function both as a **promotional formula** and as an **indication of the commercial origin of the goods and services** ⁽⁷⁾.

To be eligible for registration, a slogan has to possess a certain originality or resonance, requiring at least some interpretation by the relevant public, or setting off a cognitive process in the minds of that public ⁽⁸⁾. However, even if a slogan is not capable of setting off a cognitive process in the mind of the relevant consumer, it is not necessarily devoid of distinctive character. The factors below under subsection 2.3.1 provide criteria to be considered when assessing the distinctive character of a slogan. Depending on the circumstances of the concrete case, meeting one or more of the criteria below may indicate that the slogan is distinctive.

Applicants seek to register slogans as trade marks to ensure exclusive rights for their use in commerce, as slogans usually **convey a promotional message related to the designated goods and services**. In general, slogans can be seen as a catchy method for promoting a product, service, or company, by presenting this in a favourable way and helping the message to be easily remembered by consumers and identifying these goods and services with a particular origin.

2.3 Assessment of the distinctive character of slogans

Slogans, irrespective of whether they are considered non-conventional trade marks, alongside shapes, sounds, and other less traditional forms of marks, are not subject to **stricter criteria in the assessment of the distinctive character than other types of signs** ⁽⁹⁾ as established in several judgments. This confirms that all trade marks, regardless of their type, should be evaluated based on the **same legal principles**

was first mentioned by the ECJ in the cited case, and has since been largely invoked in most trade mark cases, such as: 12/02/2004, C-218/01, Perwoll, EU:C:2004:88 § 30; 02/06/2022, C-112/21, Classic Coach Company, EU:C:2022:428, § 54 or 25/01/2024, C-334/22, Audi (Support d'emblème sur une calandre), EU:C:2024:76, § 21.

⁽³⁾ 21/01/2010, C-398/08 P, Vorsprung durch Technik, EU:C:2010:29; 12/07/12, C-311/11 P, Wir machen das Besondere einfach, EU:C:2012:460.

⁽⁴⁾ Cambridge Advanced Learner's Dictionary & Thesaurus (2025) Available from: <https://dictionary.cambridge.org> [Accessed 3 February 2025].

⁽⁵⁾ Cambridge Business English Dictionary (2025) available from: <https://www.cambridge.es/en> [Accessed 3 February 2025].

⁽⁶⁾ Collins English Dictionary (2025) Available from: <http://www.collinsdictionary.com> [Accessed 3 February 2025].

⁽⁷⁾ 21/01/2010, C-398/08 P, Vorsprung durch Technik, EU:C:2010:29, § 45.

⁽⁸⁾ 21/01/2010, C-398/08 P, Vorsprung durch Technik, EU:C:2010:29, § 57.

⁽⁹⁾ 21/01/2010, C-398/08 P, Vorsprung durch Technik, EU:C:2010:29, § 36; 12/07/12, C-311/11 P, Wir machen das Besondere einfach, EU:C:2012:460, § 9,25 and 41.

applicable when assessing the distinctive character of a trade mark.

In principle, the **length** alone does not determine whether a slogan is distinctive; it may be relevant but is not, by itself, conclusive ⁽¹⁰⁾.

The distinctive character of a trade mark is assessed first, in relation to the goods or services in respect of which registration of the sign has been requested and, second, in relation to the perception of the section of the public targeted, which is composed of the consumers of those products or services ⁽¹¹⁾.

The distinctiveness of a slogan must be assessed in relation to the specific **goods and services** for which registration is sought. However, a general reasoning for all the goods and services covered can be provided when **it applies equally to all of the goods and services** ⁽¹²⁾.

Furthermore, the **relevant public's perception of slogans**, as recognised by the CJ, is not necessarily the same as it is with other types of marks and, consequently, it may prove more difficult to establish distinctiveness for this type of mark ⁽¹³⁾.

When slogans convey vague information about the goods and services, it is less likely that the consumer will take the time to reflect on the various possible functions of the expression ⁽¹⁴⁾, meaning that, whether beyond its promotional meaning, it might also point to a commercial origin.

2.3.1 *Non-exhaustive list of factors for the assessment of the distinctiveness of a slogan*

The following non-exhaustive factors, developed in case-law by the CJ ⁽¹⁵⁾ and the GC ⁽¹⁶⁾, **may serve** as indicators for establishing the distinctiveness of a slogan:

- it has a number of meanings;
- it constitutes a play on words;
- it introduces elements of conceptual intrigue or surprise, so that it may be perceived as imaginative, surprising or unexpected;
- it has a degree of originality ⁽¹⁷⁾ or resonance, and/or triggers in the minds of the relevant public a cognitive process or requires an interpretative effort;
- it has unusual syntactic structures and/or linguistic and stylistic devices, such as alliteration, metaphors, rhyme, paradox, etc.

When assessing the distinctive character of a slogan, none of the factors mentioned above automatically determine the outcome on their own. For example, a slogan with multiple meanings may not necessarily be

⁽¹⁰⁾ 08/07/2020, T-729/19, FAVORIT, EU:T:2020:314, § 37; 20/01/2021, T-253/20, IT'S LIKE MILK BUT MADE FOR HUMANS, EU:T:2021:21, §14, 46-48.

⁽¹¹⁾ 12/07/12, C-311/11 P, Wir machen das Besondere einfach, EU:C:2012:460, § 24.

⁽¹²⁾ 17/10/2013, C-597/12 P, ZEBEXIR / ZEBINIX, EU:C:2013:672, § 27; 21/03/2014, T-81/13, BigXtra, EU:T:2014:140, § 43; 17/05/2017, C-437/15 P, deluxe, EU:C:2017:380, § 30-33; 13/05/2020, T-156/19, We're on it, EU:T:2020:200, § 60-62.

⁽¹³⁾ 21/01/2010, C-398/08 P, Vorsprung durch Technik, EU:C:2010:29, § 37, 38.

⁽¹⁴⁾ 29/01/2015, T-59/14, Investing for a new world, EU:T:2015:56, § 41.

⁽¹⁵⁾ 21/01/2010, C-398/08 P, Vorsprung durch Technik, EU:C:2010:29, § 47, 57.

⁽¹⁶⁾ 13/05/2020, T-49/19, Create delightful human environments, EU:T:2020:197, § 27; 08/07/2020, T-696/19, Moins de migraine pour vivre mieux, EU:T:2020:329, § 28.

⁽¹⁷⁾ For the purpose of this practice, the concept of 'originality' is used to determine whether a slogan is 'distinctive' or 'non-distinctive'. This term does not refer to the concept of 'originality' in copyright law.

distinctive. Other factors might need to be assessed as well ⁽¹⁸⁾. On the other hand, even if a slogan is not capable of setting off a cognitive process in the mind of the relevant consumer, it is not necessarily devoid of distinctive character ⁽¹⁹⁾.

In summary, the fact that one or more of the factors above apply does not necessarily mean that a slogan is distinctive. Therefore, to establish the distinctive character of a slogan, **an overall assessment of the factors that apply to the relevant case must be performed** to allow a conclusion to be reached that the slogan can function as an indication of the commercial origin of the goods and services although it may also convey a promotional formula.

Subsection 2.3.2 includes examples that illustrate how these factors interplay to reach the conclusion that a slogan is distinctive, or whether it is devoid of distinctive character.

2.3.1.1 Understanding of factors

As indicated in subsection 2.3.1, the list of non-exhaustive factors serves as guidance for establishing the distinctiveness of a slogan. For the sake of completeness, an explanation of each factor, along with illustrative examples, is provided below.

The examples are intended to provide a better understanding for each factor. It is not excluded that one example may also fit for other factors. The greater the number of factors a slogan satisfies, the more likely it is to exhibit distinctiveness, as previously outlined. In addition, the interplay between the factors may be relevant. Each case is to be decided on its own merits taking all relevant circumstances into account.

Number of meanings

A slogan with multiple meanings can engage the relevant public by allowing them to interpret it in different ways. This can create a deeper, more meaningful connection with the products and services offered as the relevant public finds personal relevance in the slogan, making it easier to remember.

Nevertheless, the fact that the mark applied for may have a number of meanings is one of the characteristics capable of conferring a distinctive character on the sign; however, it is not, in itself, a decisive factor.

For example, the word mark **'We make up your mind'** ⁽²⁰⁾ (for cosmetics in Class 3) can be interpreted in several ways, as it plays on the **number of meanings** of the phrasal verb **'make up'**. This expression can mean to invent a story, to compensate for something lost, missed, or lacking, and, in the context of cosmetics, to apply makeup to oneself or another person. It also plays on the familiar idiom **'make up your mind'** typically used in the context of decision-making, but introduces a twist by shifting the subject to **'we'** suggesting guidance to the consumer in choosing a look, style, or attitude. This multiplicity of meanings requires a degree of **cognitive effort** from the relevant public, making the expression **conceptually engaging and memorable**.

Play on words

Using puns or wordplay can make a slogan more memorable by requiring an intellectual or mental exercise to comprehend the meaning and content.

⁽¹⁸⁾ 13/05/2020, T-156/19, We're on it, EU:T:2020:200, § 42; 29/01/2015, T-59/14, INVESTING FOR A NEW WORLD, EU:T:2015:56, § 38; 03/07/2008, R 1608/2007-4, MORE THAN JUST A CARD, § 14.

⁽¹⁹⁾ See the BoA [Case-law Research Report – The distinctive character of slogans \(section 16\)](#).

⁽²⁰⁾ This example is an invented example, originally created for the Common Practice 17 (CP17) developed by the European Union Intellectual Property Network (EUIPN). It is included in this document exclusively as an illustrative example of this practice.

For example, the word mark **'Where dresses come true'** ⁽²¹⁾ (for dresses in Class 25 and tailoring services in Class 40) is a **play on words** on the familiar phrase **'where dreams come true'**. By substituting **'dresses'** for **'dreams'**, the phrase creates an immediate connection with the original expression, while also conveying a sense of aspiration and fulfilment specific to the fashion and tailoring industry.

Elements of conceptual intrigue or surprise

Introducing an element of surprise or an unexpected twist can capture attention, provoke curiosity and make the slogan more engaging by making the relevant public think about its meaning.

For example, the word mark **'Software with a bite'** ⁽²²⁾ (for computer game software in Class 9 and software development, software design in Class 42) carries a layer of conceptual intrigue and surprise. The slogan can be interpreted both literally ('software with a bite' indicating a connection to digital technology) and metaphorically ('software with a bite'), implying that the software is sharp, powerful, or disruptive. This dual interpretation adds depth to the concept, suggesting that the software is more than just a tool – it carries a sense of personality, with an edge or attitude that sets it apart from the ordinary.

However, as mentioned in subsection 2.3.1, it is important to note that a slogan is not required to display 'imaginativeness' or 'conceptual tension that creates surprise and makes a striking impression' to meet the minimal distinctiveness required under Article 4(1)(b) TMD ⁽²³⁾. A thorough, case-by-case evaluation of all relevant factors is needed to determine if the slogan meets the required level of distinctiveness.

Originality or resonance

A slogan which exhibits a degree of originality and a certain resonance will more likely capture the relevant public's attention.

For example, the word mark **'Bottle the Chaos'** ⁽²⁴⁾ (for energy drinks and sodas in Class 32) stands out due to its originality and the intriguing resonance it evokes. The term **'chaos'** conveys a sense of high energy, unpredictability, and intensity, which aligns well with the nature of energy drinks. The concept of **'bottling'** chaos suggests the ability to capture and control something wild or unexpected. This combination of dynamic yet relatable language makes the slogan both original and impactful.

Cognitive process or interpretative effort

A slogan that requires some thought or interpretation can be more engaging as it involves the public in a mental process, making the slogan more memorable. However, even if the slogan is not capable of setting off a cognitive process in the mind of the relevant public, it is not necessarily devoid of distinctive character.

For example, the word mark **'Getting Words to Work'** (28/02/2024, R 1242/20232, for business advisory services, writing publicity text in Class 35, training in Class 41, and quality audits and technical report preparation in Class 42) combines words in an unconventional manner. The phrase **'to get something to work'** is commonly employed in relation to mechanical or electrical devices. By applying this familiar structure to the aforementioned services in Classes 35, 41 and 42, the sign prompts the relevant public to engage in a cognitive process, encouraging them to reinterpret the slogan in a new context.

⁽²¹⁾ This example is an invented example, originally created for the CP17 developed by the EUIPN. It is included in this document exclusively as an illustrative example of this practice.

⁽²²⁾ This example is an invented example, originally created for the CP17 developed by the EUIPN. It is included in this document exclusively as an illustrative example of this practice.

⁽²³⁾ 21/01/2010, C-398/08 P, Vorsprung durch Technik, EU:C:2010:29, § 39.

⁽²⁴⁾ This example is an invented example, originally created for the CP17 developed by the EUIPN. It is included in this document exclusively as an illustrative example of this practice.

Unusual syntactic structures and/or linguistic devices

The use of unorthodox grammatical forms must be carefully assessed because slogans are often written in a simplified form, in such a way as to make them more concise and snappier⁽²⁵⁾. Using unique sentence structures, alliteration, metaphors, rhyme, or paradox can make a slogan catchier and more memorable. These elements can add a poetic or rhythmic quality to the slogan.

For example, the word mark **'IT's APP2You'** (DPMA No. 302012059605, for downloadable computer software in Class 9, providing access to information on the Internet in Class 38, educational instructions in Class 41, and engineering services in Class 42) employs an unconventional syntactic structure by creatively altering the familiar phrase **'it is up to you'**. The substitution of the word **'up'** for the word **'app'** and the use of the number **'2'** as a homophone for **'to'** adds a layer of wordplay which, **in combination in this particular case**, makes the mark memorable. This combination of unusual syntax and homophonic substitution enhances the originality of the slogan while maintaining its intended meaning.

In addition, the lack of grammatical elements such as definite articles or pronouns (THE, IT, etc.), conjunctions (OR, AND, etc.) or prepositions (OF, FOR, etc.) may not always be sufficient to make the slogan distinctive⁽²⁶⁾. Similarly, the inclusion of **misspellings**, particularly when the different spelling of a word sign does not alter its pronunciation, does not impact the possible conceptual content that the relevant public associates with the sign⁽²⁷⁾.

Besides, when assessing the distinctiveness of a sign, the finding that the sign applied for lacks distinctive character is based not only on the fact that the sign has a clear meaning and respects the rules of syntax and grammar, but also that the **semantic content** of the slogan, indicating the intended purpose or purpose of the designated goods and services, aims to promote them and not to indicate their origin⁽²⁸⁾.

2.3.2 Examples of slogans

The examples below illustrate the reasonings that can support an objection or a non-objection under Article 7(1)(b) of the Law 38/2008 as well as the different functions that objectionable slogans may perform. This list of examples is not exhaustive and does not intend to cover all the slogans that could fall under this ground for refusal, nor does it cover other grounds for refusal. **Moreover, the examples are based on the assumption that the relevant public is composed of native English speakers.**

2.3.2.1 Examples of slogans that are **objectionable** under Article 7(1)(b) of the Law 38/2008

As a general rule, slogans are objectionable under Article 7(1)(b) of the Law 38/2008 if they are perceived as a mere promotional formula – that is to say, a mere advertising/laudatory/banal message highlighting the positive aspects of the goods and services concerned in a plain, direct and unambiguous way. As a consequence, the slogan does not possess any aspect outlined in subsection 2.3.1 *'Non-exhaustive list of factors for the assessment of the distinctiveness of a slogan'* that might enable the relevant public to identify that sign easily and immediately as a distinctive trade mark for the goods and services concerned.

The following examples illustrate slogans that **lack distinctive character**.

⁽²⁵⁾ 24/01/2008, T-88/06, Safety 1st, EU:T:2008:15, § 40.

⁽²⁶⁾ 24/01/2008, T-88/06, Safety 1st, EU:T:2008:15, § 18-19.

⁽²⁷⁾ 30/04/2013, T-640/11, RELY-ABLE, EU:T:2013:225, § 20.

⁽²⁸⁾ 13/05/2020, T-49/19, Create delightful human environments, EU:T:2020:197, § 27.

Example 1:

Slogan	Goods and services	Main function	Reasoning
DREAM IT, DO IT! (²⁹)	Class 35: Promoting and providing professional assistance to individuals [...] Class 36: Financial assistance to individuals and organisations [...] Class 41: Educational services, namely publishing. Class 45: Social services.	This sign may be seen as an inspirational or motivational statement.	The relevant public will perceive the sign 'DREAM IT, DO IT!' as an invitation or encouragement to pursue their dreams and will understand the message that the services covered by the trade mark will help them achieve those dreams. Assessment of distinctiveness As the GC indicated (³⁰), the combination of the two short phrases, 'DREAM IT, DO IT!', forms a grammatically and syntactically correct sequence that is logically coherent and will be immediately noticed by the relevant public. Therefore, the structure of the sign is grammatically correct and its expression 'DREAM IT, DO IT!' lacks the originality and resonance needed to trigger a cognitive process or interpretative effort in the relevant public that would enable them to remember the sign. Finally, the presence of an exclamation mark at the end of the sign does not alter that finding, as imperative phrases commonly end with such punctuation, which is insufficient to confer the minimum distinctive character on an ordinary promotional slogan. Based on the above, 'DREAM IT, DO IT!' is merely a promotional message that conveys an inspirational or motivational statement. It lacks distinctive character and, as a result, will not be perceived as an indication of the commercial origin of the services.

Example 2:

Slogan	Goods and services	Main function	Reasoning
Pioneering for You (³¹)	Class 7: Machines for chemical industry [...] Class 9: Scientific apparatus and instruments [...] Class 11: Lighting, heating, [...] Class 37: Construction; installation	This sign may be seen as a value statement.	The relevant public will understand the sign 'Pioneering for You' as a value statement. More specifically, the component 'for you' is intended to indicate to the public that they can expect particularly positive results and technically advanced solutions using the applicant's goods and services. Assessment of distinctiveness As the GC indicated (³²), the use of the capital letter 'Y' in the word element 'you' does not confer any originality or resonance on the sign, but corresponds more to what is

(²⁹) 02/07/2008, T-186/07, DREAM IT, DO IT!, EU:T:2008:244.

(³⁰) 02/07/2008, T-186/07, DREAM IT, DO IT!, EU: T: 2008:244, § 27.

(³¹) 12/12/2014, T-601/13, Pioneering for You, EU:T:2014:1067.

(³²) 12/12/2014, T-601/13, Pioneering for You, EU:T:2014:1067, § 35-37.

	work [...] Class 42: Scientific and technological services [...] among other goods/services.	normal in English, in particular in advertising and the press, and especially in newspaper headlines. The combination of the two main elements 'pioneering' and 'for you', is a syntactic structure that is sufficiently clear in English, without multiple interpretations, and is to some extent allusive of the goods and services the sign may cover. Furthermore, the meaning of the sign is clear and does not leave any doubts nor require a minimum interpretation. Also, it does not trigger a cognitive process among the relevant public, which will perceive the sign as a typical advertising statement. Based on the above, 'Pioneering for You' is merely a value statement that reflects the main values and beliefs about a good or service. It lacks distinctive character and, as a result, will not be perceived as an indication of the commercial origin of the goods and services.
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Example 3:

Slogan	Goods and services	Main function	Reasoning
CREATE DELIGHTFUL HUMAN ENVIRONMENTS (³³)	Class 9: Electronic controller for adjusting and controlling the tinting of insulated glass window units [...] Class 19: Insulated glass window units [...] Class 37: Installation, maintenance and repair services for glass units for windows [...] among other goods/services.	This sign may be seen as a value statement.	The sign 'CREATE DELIGHTFUL HUMAN ENVIRONMENTS' carries the value statement that by purchasing goods and services such as those at issue, the relevant public would enjoy the benefits promised. Assessment of distinctiveness As the GC indicated (³⁴), the expression 'CREATE DELIGHTFUL HUMAN ENVIRONMENTS' has a clear and simple meaning in everyday language that respects the rules of English syntax and grammar. The sign refers to the goods and services covered by the sign, lacking fancifulness or any particular originality. Therefore, it will be exclusively perceived by the relevant public as a laudatory message and a mere promotional formula, without any interpretation effort being required. The sign does not possess any aspect that might enable the relevant public to memorise that sign easily and immediately as a distinctive trade mark for the goods and services concerned. Since the slogan in question has a clear and simple meaning that alludes to the creation of a pleasant interior due to the goods and services that it covers, it will exclusively be perceived by the relevant public as a laudatory message and a mere promotional formula, without any

(³³) 13/05/2020, T-49/19, CREATE DELIGHTFUL HUMAN ENVIRONMENTS, EU:T:2020:197.

(³⁴) 13/05/2020, T-49/19, CREATE DELIGHTFUL HUMAN ENVIRONMENTS, EU:T:2020:197, § 25-29.

			interpretation effort being required, and not as an indication of the commercial origin of those goods and services. Based on the above, 'CREATE DELIGHTFUL HUMAN ENVIRONMENTS' is merely a promotional and informative message about the goods and services. It lacks distinctive character and, as a result, will not be perceived as an indication of the commercial origin of the goods and services.
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Example 4:

Slogan	Goods and services	Main function	Reasoning
SO WHAT DO I DO WITH MY MONEY ⁽³⁵⁾	Class 35: Providing information and analysis relating to economic market data [...] Class 36: Investment management services [...] among other services.	This sign may be seen as a customer service statement .	The expression 'SO WHAT DO I DO WITH MY MONEY' is a customer service statement and prompts the relevant public to ask themselves what they should do with their financial resources and assets. In the present case, the relevant public of the services covered by the application for registration will, on reading or hearing that expression, wonder whether they are using their money effectively. Assessment of distinctiveness As the GC indicated ⁽³⁶⁾, the sign does not have an unusual grammatical structure, it refers to the services covered by the sign and constitutes a banal expression in view of the nature of those services. Notably, the fact that the sign uses the English words 'I', 'what' and 'do', does not introduce multiple meanings to the expression. Moreover, the word 'so' at the beginning of the slogan, or the fact that the sign is expressed in the form of a question, without a question mark, does not provide any originality to the sign. Based on the above, 'SO WHAT DO I DO WITH MY MONEY' is merely a customer service statement that reflects the main values and beliefs about the service. It lacks distinctive character and, as a result, will not be perceived as an indication of the commercial origin of the services.

Example 5:

Slogan	Goods and services	Main function	Reasoning
Take Control of Your Data ⁽³⁷⁾	Class 36: Financial, monetary and banking services [...] Class 38: Provision	This sign may be seen as a motivational statement ; encouraging a responsible	The relevant public would understand the sign 'Take Control of Your Data' as a motivational statement encouraging them to take over the direction and management of their online personal information. Notably, the relevant public will understand that while using the services applied for, they will always be in control of their data, and will be able to choose,

⁽³⁵⁾ 29/01/2015, T-609/13, SO WHAT DO I DO WITH MY MONEY, EU: T:2015:54.

⁽³⁶⁾ 29/01/2015, T-609/13, SO WHAT DO I DO WITH MY MONEY, EU: T:2015:54, § 31-39.

⁽³⁷⁾ https://euipo.europa.eu/eSearchCLW/#key/trademark/RFS_20230329_018777117_018777117

	and rental of telecommunications facilities and equipment [...] Class 42: Design services; IT services; Science and technology services [...] among other services.	behaviour.	what, when and with whom they share it, prevent any unauthorised access, and help to keep their identity and credentials protected from potential misuse. <u>Assessment of distinctiveness</u> The expression 'Take Control of Your Data' uses a common syntactic structure that adheres to the semantic and grammatical rules of everyday English language. This clear message lacks originality or resonance. In addition, the grammatical structure of the sign allows the relevant public to easily understand its meaning, without any hidden interpretations or meanings. Based on the above, 'Take Control of Your Data' is merely a motivational statement. It lacks distinctive character and, as a result, will not be perceived as an indication of the commercial origin of the services.
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Example 6:

Slogan	Goods and services	Main function	Reasoning
Don't risk your home safety ⁽³⁸⁾	Class 36 (insurance services)	This sign may be seen as a motivational statement , encouraging a responsible behaviour.	The relevant public would understand the sign 'Don't risk your home safety' as a clear warning, urging people to take necessary precautions to ensure their home remains safe. This sign is common in contexts related to home security, safety products, or services aimed at preventing accidents or intrusions. <u>Assessment of distinctiveness</u> The sign 'Don't risk your home safety' conveys a clear message that is easy to understand. Its simplicity and lack of unusual structures or hidden meanings ensure that the message is direct and unambiguous. It does not have elements of surprise or originality, and highlights the importance of home safety, without any further cognitive process. Being a straightforward message, it does not have a number of meanings and lacks conceptual intrigue. Based on the above, 'Don't risk your home safety' is merely a motivational statement. It lacks distinctive character and, as a result, will not be perceived as an indication of the commercial origin of the services.

⁽³⁸⁾ This example is an invented example, originally created for the CP17 developed by the EUIPN. It is included in this document exclusively as an illustrative example of this practice.

Example 7:

Slogan	Goods and services	Main function	Reasoning
It is already there before you even need it ⁽³⁹⁾	Class 39 (parcel delivery)	This sign may be seen as a customer service statement .	The expression 'It is already there before you even need it' may be seen as a customer service statement and conveys to the relevant public the idea of the exceptional speed and reliability of the delivery service. The services offered are so quick and reliable that the items will arrive almost instantaneously, even before you need them. Assessment of distinctiveness The sign provides a clear message that is easy to understand. Its simplicity and lack of unusual structures or hidden meanings ensure that the message is direct and unambiguous. It does not have elements of surprise or originality and communicates the exceptional speed and reliability of the delivery service, without any further cognitive process. Based on the above, 'It is already there before you even need it' is merely a customer service statement. It lacks distinctive character and, as a result, will not be perceived as an indication of the commercial origin of the services.

Example 8:

Slogan	Goods and services	Main function	Reasoning
You take the picture; we edit it to perfection ⁽⁴⁰⁾	Class 41 (photography)	This sign may be seen as a value statement .	The relevant public would understand the sign 'You take the picture; we edit it to perfection' as a value statement for professional photo editing services. Assessment of distinctiveness The sign 'You take the picture; we edit it to perfection' provides a clear message, namely, the applicant's photography services are of an exceptional standard. Its simplicity and lack of unusual structures or hidden meanings ensure that the message conveyed is direct and unambiguous. There is also a lack of originality, and the relevant public has no need to make any interpretative effort. In addition, the relevant public can imagine the services offered so there is also a lack of conceptual intrigue. Based on the above, 'You take the picture; we edit it to

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			perfection' is merely a value and descriptive statement . It lacks distinctive character and, as a result, will not be perceived as an indication of the commercial origin of the services.
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Example 9:

Slogan	Goods and services	Main function	Reasoning
Save with us (⁴¹)	Class 36 (debt advisory services)	This sign may be seen as a motivational statement , encouraging a responsible behaviour.	The relevant public would understand the sign 'Save with us' as a motivational statement or encouragement for them to save money if they obtain debt advice from the applicant. It could be interpreted as a straightforward request to the relevant public. Assessment of distinctiveness The sign's simplicity and lack of unusual structures or hidden meanings ensure that the message is direct and unambiguous. The sign is immediately comprehensible as it does not contain any misspellings or variations. As the sign already alludes to the services offered, it lacks originality, and the relevant public has no need to make any interpretative effort. In addition, they can imagine the services offered so there is also a lack of conceptual intrigue.

2.3.2.2 Examples of slogans that are non-objectionable under Article 7(1)(b) of the Law 38/2008

Slogans are deemed to be **distinctive** if, in addition to **their promotional function**, **the public perceives them as simultaneously serving as an indication of the commercial origin of the goods or services in question**. As slogans in this case are **more than** a mere advertising message highlighting the positive aspects of the goods and services, the relevant public will perceive them as a badge of origin. As a result, such slogans can distinguish the applicant's goods or services from those with a different commercial origin.

To establish the requirement of distinctiveness, at least one or more factors outlined in subsection 2.3.1 must be met.

The following examples illustrate slogans that **are seen as distinctive**.

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Example 1:

Slogan	Goods and services	Reasoning
BEAUTY NEEDS TO TRAVEL (⁴²)	Class 3: Washing and bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; preparations for cleaning teeth. Class 16: Packing, cushioning and stuffing materials of paper [...] Class 35: Advertising [...] among other goods/services.	The relevant public could understand the sign 'BEAUTY NEEDS TO TRAVEL' to mean that the applicant's beauty products are essential for people on the go. It could also imply that maintaining a good appearance and self-care are important wherever you are, for instance, by using portable or travel-sized cosmetics. An intellectual effort to understand the meaning of the sign is therefore needed because it has more than one meaning. Assessment of distinctiveness The sign conveys an abstract message referring to beauty. Furthermore, when the sign is used in relation to the goods and services in question, the relevant public will have to place that sign in a certain context, which requires an intellectual effort, and which is consequently capable of distinguishing the applicant's goods and services from goods that have another commercial origin. This also evokes conceptual intrigue around the action of beauty travelling, as beauty is a subjective concept and the idea of beauty travelling is not common, which also brings originality to the concept. It can be concluded that the sign has the minimum degree of distinctive character. The relevant public will perceive the sign as an indication of the commercial origin of the goods and services.

Example 2:

Slogan	Goods and services	Reasoning
As Green As White Can Be (⁴³)	Class 1: Chemical preparations [...] Class 2: Mineral pigments [...] Class 5: Calcium salts for pharmaceutical use among other classes.	The relevant public would understand the sign 'As Green As White Can Be' as alluding to the applicant's goods being environmentally friendly because the colour 'green' is usually associated with conservation. However, the sign poses a riddle as the colour 'green' is not the colour 'white'. Therefore, further efforts have to be made to understand the meaning of the sign. Assessment of distinctiveness The sign consists of an oxymoron and displays a degree of paradox, making the sign memorable. It does not convey any clear and direct information about the goods in question. Therefore, the relevant public will have to place this combination of words in a certain context, which triggers an intellectual effort in the mind of the relevant public in order to understand and reflect on the meaning of the sign. The sign also evokes an element of conceptual intrigue, as the relevant public has to imagine the purpose of certain colours, which is not a common statement.

(⁴²) <https://euipo.europa.eu/eSearch/#details/trademarks/002874071>

(⁴³) 06/09/2017, R 433/2017-2, As Green As White Can Be, § 26. The decision refers to a figurative mark but for the purpose of this practice, the sign is evaluated as a word mark.

		The relevant public purchasing the goods bearing the sign can effortlessly repeat the experience on a subsequent purchase, because the sign's catchy message will leave a lasting trace in the memory. Consequently, the sign has inherent distinctive character, and the relevant public will perceive the sign as an indication of the commercial origin of the goods.
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Example 3:

Slogan	Goods and services	Reasoning
What do clouds smell like? ⁽⁴⁴⁾	Class 42 (cloud computing services)	The relevant public might understand the sign 'What do clouds smell like?' as referring to the field of meteorology, due to the word 'clouds' or to fragrances due to the inclusion of the verb 'smell'. However, further efforts have to be made to understand the meaning of the sign as it is actually referring to cloud computing services. <u>Assessment of distinctiveness</u> The sign does not convey any information about the cloud computing services in question. Therefore, the relevant public will have to place this combination of words in a certain context, which triggers an intellectual effort in the mind of the relevant public in order to understand and reflect if the term 'clouds' has several meanings. The sign also evokes an element of conceptual intrigue, as the relevant public would pause to wonder what clouds do smell like. The relevant public also has to ascertain whether the sign has any meaning for cloud computing services. Consequently, the sign has inherent distinctive character, and the relevant public will perceive the sign as an indication of the commercial origin of the services.

Example 4:

Slogan	Goods and services	Reasoning
Colder than your ex's heart ⁽⁴⁵⁾	Class 32 (beer)	The relevant public would understand the sign 'Colder than your ex's heart' as a humorous and exaggerated way to describe the usual pain suffered after a breakup. The expression plays on the stereotype of an ex-partner being emotionally cold or heartless. <u>Assessment of distinctiveness</u> The sign does not convey any information about the goods, namely beer. Therefore, the relevant public will have to place this combination of words in a certain context, which requires an intellectual effort. The sign will make the relevant public think about the meaning behind the slogan, setting off a cognitive process.

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		Based on the above, the sign has a distinctive character , and the relevant public will perceive the sign as an indication of the commercial origin of the goods.
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Example 5:

Slogan	Goods and services	Reasoning
LOOSEN UP IN THE CLOUDS (⁴⁶)	Class 39 (air travel)	The relevant public would understand the sign 'LOOSEN UP IN THE CLOUDS' as an invitation to relax and unwind in a comfortable, perhaps even dreamy, setting. The expression generally means to relax and enjoy a peaceful environment. <u>Assessment of distinctiveness</u> The word 'loosen' means to make something less tight or firm. The expression 'up in the clouds' is a metaphor often used to describe someone who is daydreaming or not paying attention to what is happening around them. When the relevant public encounters the sign 'loosen up in the clouds', they will have to make some effort to interpret the meaning, and they might think that the air travel services offered will be a relaxing experience. Based on the above, the sign has inherent distinctive character, as the relevant public will perceive it as an indication of the commercial origin in connection with the air travel services being offered.

Example 6:

Slogan	Goods and services	Reasoning
Elevate Your Senses (⁴⁷)	Class 7 (elevators)	The relevant public would understand the sign 'Elevate Your Senses' as alluding to the elevators having superior functions and an enhanced functionality, making the experience more enjoyable. <u>Assessment of distinctiveness</u> The sign has a number of meanings, as the word 'elevate', when referring to senses, has to be interpreted as transforming the subject into a different state of mind. The sign also invites the relevant public to make an intellectual effort due to the play on words. It will make them stop and think about what exactly these words mean together, imagining the different feelings that the sign describes. It may also trigger a cognitive effort as it can also be interpreted as a way of enjoying the experience that the goods provide.

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		Based on the above, the sign has a distinctive character , and the relevant public will perceive the sign as an indication of the commercial origin of the goods.
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Example 7:

Slogan	Goods and services	Reasoning
Trust the Silence. Hear What's Next (⁴⁸)	Class 9 (audio devices, headphones, AI interfaces). Class 41 (guided audio content, podcasts, educational material).	The sign 'Trust the Silence. Hear What's Next' plays on the contrast between silence and sound, which is likely to resonate with the relevant public, particularly in the context of audio products or services. The first part, 'Trust the Silence', implies reliability, calm, and quality, possibly referencing noise-cancelling or high-fidelity audio technology. The second part, 'Hear What's Next', evokes a sense of innovation and anticipation, hinting at an exciting, forward-looking, or immersive listening experience. Assessment of distinctiveness The expression is suggestive, as it evokes an emotional or intellectual response from the relevant public. It conveys the idea that silence is an integral part of the experience, which could relate to high-quality sound systems, noise-canceling headphones, or immersive audio technology. This indirect messaging requires a degree of cognitive effort to interpret, enhancing its impact and memorability. The sign does not immediately inform the relevant public about specific technical features but requires an intellectual engagement to fully appreciate the concept. Based on the above, 'Trust the Silence. Hear What's Next' has a distinctive character, and the relevant public will perceive the sign as an indication of the commercial origin of the goods and services.

Example 8:

Slogan	Goods and services	Reasoning
Eyeing the future (⁴⁹)	Class 44 (optometry services)	The expression 'Eyeing the future' could be seen by the relevant public as an invitation to see or guess the future. Therefore, further efforts have to be made to understand the exact meaning of the sign. Assessment of distinctiveness The sign, which refers to the eye health sector, does not convey clear information about the services. Therefore, the relevant public will have to place this combination of words in a certain context, which requires an intellectual effort. The sign will make the relevant public think about the meaning behind the slogan, setting off a cognitive process. Based on the above, the sign has a distinctive character, and the relevant public will perceive the sign as an indication of the commercial origin of the services.

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