

A HELICOPTER VIEW OF '*GREEN*' TRADE MARK AND DESIGN CASE LAW

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de Harven

Tribunal

Pierre-Yves

Judge at the Brussels Business

I. Definition of '*Green*' trade mark or design

A trade mark or a design can be considered as '*Green*' if it contains a '*Green*' term and/or if it is related to environmental protection.

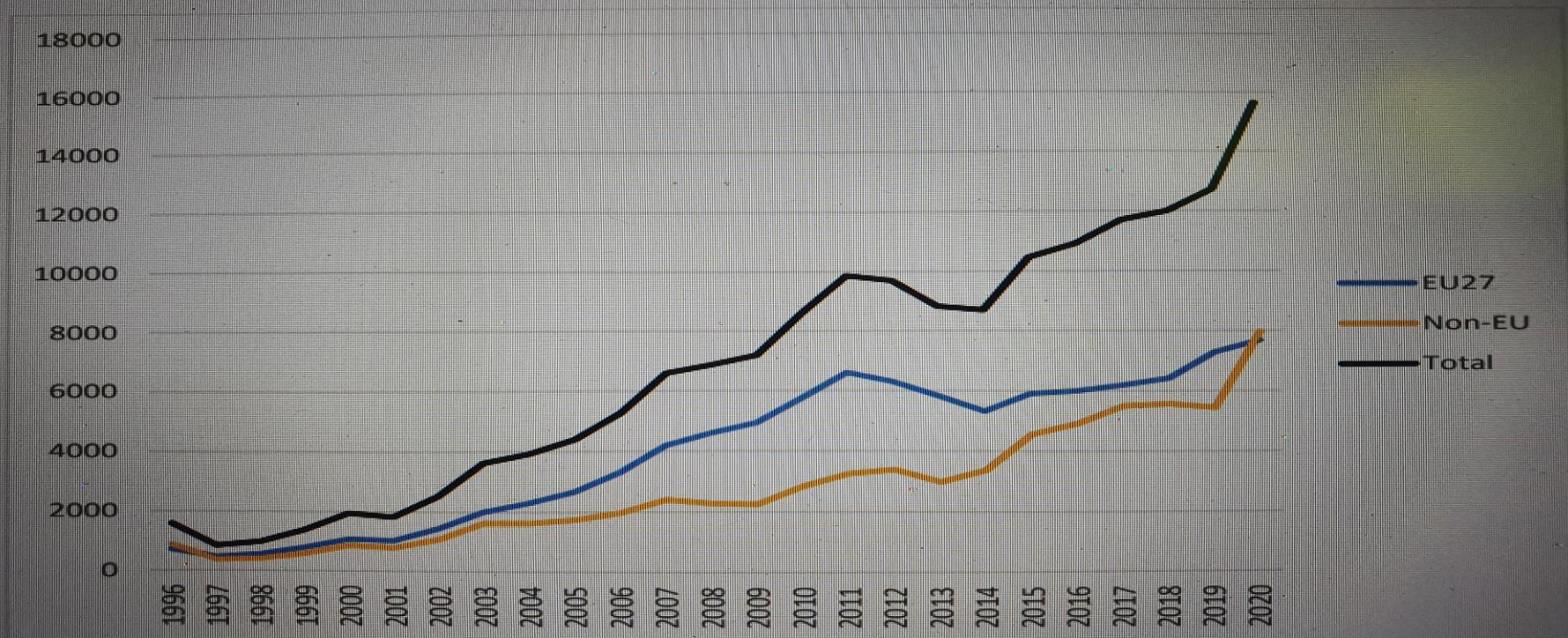


II. Importance of ‘Green’ trade mark

The absolute number of “Green” EUTMs has increased significantly since 1996, as has the share of “Green” EUTMs. In fact the share of “Green” EUTMs has oscillated between 10% and 12% during the past decade, compared to less than 4% between 1996 and 2000.

(https://euipo.europa.eu/tunnelweb/secure/webdav/guest/document_library/observatory/documents/reports/2021_Green_EU_trade_marks/2021_Green_EU_trade_marks_FullR_en.pdf).

Figure 1. Green EUTM filings, 1996-2020



A. ‘Green’ case law: Some decisions are just a reminder of the well-known principles

GENERAL COURT 17/05/2018



- ▶ The design produced the ‘*same overall impression*’ on the informed user and therefore it ‘*lacked individual character*’.

C. Of Appeal Brussels 18/09/2015

“AQUACLEAN”

- ▶ Class 1 : Chemical substances, chemical materials and chemical preparations,...
- ▶ Even if “AQUACLEAN” has been accepted in the UK and the US it cannot be accepted in the Benelux.
- ▶ Because it is ‘*descriptive*’.
- ▶ Bearing in mind *it is the general interest that justifies the refusal of registration of a descriptive mark* (C-108/97 and C-109/97 Windsurfing Chiemsee).

B. Specificities of ‘Green’ trade marks

EUIPO BoA 20/05/2021



- Class 19: Building materials,...
- Class 31: Plants for rooftop,...
- The applied TM will be understood as a meaningful expression, namely *‘roofs used to achieve environmental benefits’*.
- The word ‘Green’ appearing in the colour green, equally *‘reinforces the descriptive meaning of the term concerned’*.
- As regards the four earlier EUTMs registrations referred to by the applicant, the BoA notes that these cannot alter the above conclusions.

C. Appeal Paris 14/02/2017

➤ ‘LABEL VERT’



‘JOHNNIE WALKER
GREEN LABEL’

- Classes 29: Meat, fish, poultry and game,...
- Class 30: Coffee, tea, cocoa,...
- Class 32: Non-alcoholic beverages,...
- ‘LABEL VERT’ *‘evokes ecological certification’*.
- Therefore, *‘since it is not a certification mark, is likely to mislead the consumer’*.
- Because the consumer could believe that the sign refers to *‘characteristics or specifications guaranteed and or certified’*.

C. Difficulties with ‘Green’ trade marks

EUIPO BoA 09/03/22

- “GREEN CUISINE”
- Class 29: Frozen, prepared and pre-packaged meals,...
- ▶ The applicant argues that the UK national IP office (UKIPO) and the French national authority (INPI) registered the mark ‘GREEN CUISINE’ for goods in Class 29.
- ▶ The sign at stake *‘is not capable of distinguishing the goods applied for, in terms of their commercial origin’*. The targeted public will instead perceive the sign as an *‘indication for promoting vegetarian cuisine and methods of cooking fresh green vegetables or healthy and/or ecological cooking’*.

GENERAL COURT 13/05/2020

- “BIO- INSECT Shocker”
- Class 1: Chemical preparations,...
- Class 5: Disinfectants; vermin destroying preparations,...
- Class 31: Live animals; fresh fruits and vegetables; malt; pet drinks,...
- ▶ The “word element ‘bio’ as a prefix or suffix has acquired a ‘highly suggestive connotation’”.
- ▶ The presence of the term ‘bio’ on the biocidal products suffices to establish a *“sufficiently serious risk that the consumer will be deceived”*.
- ▶ BIO- INSECT Shocker is *‘deceptive in respect of the goods identified as biocidal in Class 1 and 5’*.

III. Conclusion: What should we do facing 'Green' trade mark or design



- ▶ The **same regulation** and the **same case law** are applied.
- ▶ But Green, eco, bio,... have a **different meaning today**, compared to 20 years ago and a '*highly suggestive connotation*'.
- ▶ **Attention** should therefore be paid to the possible **misleading and/or deceptive character**.

THE END



**THANKS FOR
YOUR ATTENTION
AND
PLEASE DON'T ASK
TOO MUCH**

Pierre-Yves de Harven

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Judge at the Brussels Business Tribunal

