

***GUIDELINES FOR EXAMINATION OF
EUROPEAN UNION TRADE MARKS***

***EUROPEAN UNION
INTELLECTUAL PROPERTY OFFICE
(EUIPO)***

PART B

EXAMINATION

SECTION 4

ABSOLUTE GROUNDS FOR REFUSAL

CHAPTER 4

***DESCRIPTIVE TRADE MARKS
ARTICLE 7(1)(c) EUTMR***

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1 General remarks

1.1 The notion of descriptiveness

A sign must be refused as descriptive if it has a meaning which is immediately perceived by the relevant public as providing information about the goods and services applied for. This is the case where the sign provides information about, among other things, the quantity, quality, characteristics, purpose, kind and/or size of the goods or services. The relationship between the term and the goods and services must be sufficiently direct and specific (judgments of 20/07/2004, T-311/02, Limo, EU:T:2004:245, § 30; 30/11/2004, T-173/03, Nurseryroom, EU:T:2004:347, § 20), as well as concrete, direct and understood without further reflection (judgment of 26/10/2000, T-345/99, Trustedlink, EU:T:2000:246, § 35). If a mark is descriptive, it is also non-distinctive.

Article 7(1)(c) EUTMR does not apply to those terms that are only suggestive or allusive as regards certain characteristics of the goods and/or services. Sometimes this is also referred to as vague or indirect references to the goods and/or services (judgment 31/01/2001, T-135/99, Cine Action, EU:T:2001:30, § 29).

The public interest underlying Article 7(1)(c) EUTMR is that exclusive rights should not exist for purely descriptive terms that other traders might wish to use as well. However, it is not necessary for the Office to show that there is already a descriptive use by the applicant or its competitors. Consequently, the number of competitors that could be affected is totally irrelevant. Therefore, if a word is descriptive in its ordinary and plain meaning, this ground for refusal cannot be overcome by showing that the applicant is the only person who produces, or is capable of producing, the goods in question.

1.2 The reference base

The **reference base** is the ordinary understanding of the relevant public of the word in question. That can be corroborated by **dictionary entries**, examples of the use of the term in a descriptive manner found on internet **websites**, or it may clearly follow from the **ordinary understanding** of the term.

It is not necessary for the Office to prove that the word is the subject of a dictionary entry in order to refuse a sign. In particular for composite terms, dictionaries do not mention all possible combinations. What matters is the ordinary and plain meaning. In addition, terms used as specialised terminology to designate the respective relevant characteristics of the goods and services are to be considered descriptive. In these cases it is not required to demonstrate that the meaning of the term is immediately apparent to the relevant consumers to which the goods and services are addressed. It suffices that the term is meant to be used, or could be understood by part of the relevant public, as a description of the goods or services for which protection is sought, or a characteristic of the goods and services (judgments of 17/09/2008, T-226/07, Pranahaus, EU:T:2008:381, § 36, and of 18/11/2015, T-558/14, TRILOBULAR, EU:T:2015:858, § 50).

Article 7(1)(c) EUTMR also applies to **transliterations**. In particular, transliterations of Greek words into Latin characters must be treated in the same way for the purpose of examining absolute grounds for refusal as words written in Greek characters and vice versa (judgment of 16/12/2010, T-281/09, Chroma, EU:T:2010:537, § 34). This is because the Latin alphabet is known to Greek-speaking consumers. The same applies

to the Cyrillic alphabet, which is used in the EU by Bulgarians, who are also familiar with Latin characters.

The following **principles** in respect of both language and dictionary use apply, with regards to the reference base:

Languages

1. The sign must be refused if it is descriptive in any of the **official languages of the European Union**, regardless of the size or population of the respective country. Systematic language checks are only performed in the official languages of the European Union.
2. Should there be convincing evidence that a given term has a meaning in a **language other than the official languages of the Union** and is understood by a significant section of the relevant public in at least a part of the European Union, this term must also be refused pursuant to Article 7(2) EUTMR (judgment of 13/09/2012, T-72/11, Espetec, EU:T:2012:424, § 35-36). For example, the term ‘Hellim’ is the Turkish translation of the word ‘Halloumi’, a type of cheese. Since Turkish is an official language in Cyprus, it is a language that is understood and spoken by part of the population of Cyprus, and therefore the average consumer in Cyprus may understand that ‘Hellim’ is a descriptive term for cheese (judgment of 13/06/2012, T-534/10, Hellim, EU:T:2012:292).

Under point 1, consideration must, under certain circumstances, be given to the understanding by the relevant public of foreign terms in the sense that they originate from another EU language. This may be because, depending on the goods and services claimed in the EUTM application, the relevant public

(i) has an **elementary understanding** of the language in question and the sign consists of an elementary word of that language. This is supported by the fact that the GC has held that a very large proportion of European consumers and professionals have an elementary knowledge of English (judgment of 26/09/2012, T-301/09, Citigate, EU:T:2012:473, § 41).

(ii) consists of **specialists** for whom certain technical terms in another EU Member State’s official language are understood.

The GC has held that certain English terms in the medical field (judgment of 29/03/2012, T-242/11, 3D eXam, EU:T:2012:179, § 26), in technical fields (judgment of 09/03/2012, T-172/10, Base-seal, EU:T:2012:119, § 54) and in financial matters (judgment of 26/09/2012, T-301/09, Citigate, EU:T:2012:473, § 41) will be understood by the relevant professionals throughout the European Union, as English is the commonly used professional language in these areas.

(iii) understands the meaning in cases where a term in one language (e.g. English) has **entered into the dictionary or parlance** of another language (e.g. German) and acquired a descriptive character which may or may not exist in the original language (e.g. the sign ‘Old Timer’ applied for cars would be objectionable with regard to the German-speaking public as a reference to ‘classic/veteran car’ and not necessarily for the English-speaking consumers).

This is supported by the fact that the understanding of languages is not strictly limited by geographical borders, it may well be that, **for historical, cultural or cross-border market reasons**, certain (usually elementary) vocabulary of a given language may spread and could be widely understood by the general

public in other Member States, particularly those with contiguous land borders, e.g. ‘bon appétit’, ‘ciao’, ‘siesta’, ‘fiesta’, ‘merci’, ‘voilà’.

Evidence

The **evidence** can come by individual knowledge of the particular examiner, or is produced via third-party observations or by way of documentation included in cancellation requests.

- An internet search is also a valid means of evidence for the descriptive meaning, in particular for new terms, technical jargon or slang words, but the evidence should be carefully assessed in order to find out whether the word is actually used in a descriptive manner, as often the difference between descriptive and trade mark use on the internet is vague and the internet contains a vast amount of unstructured, unverified information or statements.
- The objection should clearly state which language or languages are concerned, which makes the ground for refusal applicable at least for the Member State in which this language is the official language or one of the official languages, and excludes conversion for that Member State (see Rule 45(4) EUTMR).

1.3 Characteristics mentioned under Article 7(1)(c) EUTMR

Kind of goods and services

This includes the goods or services themselves, that is, their type or nature. For example, ‘bank’ for financial services, ‘Perle’ for wines and sparkling wines (judgment of 01/02/2013, T-104/11, ‘Perle’, EU:T:2013:51,) or ‘Universaltelefonbuch’ for a universal telephone directory (judgments of 14/06/2001, T-357/99 and T-358/99, Universaltelefonbuch, EU:T:2001:162) or constituent parts or components of the goods (judgment of 15/01/2013, T-625/11, EcoDoor, EU:T:2013:14, § 26).

Quality

This includes both laudatory terms, referring to a superior quality of the respective goods or services, as well as the inherent quality of the goods or services. It covers terms such as ‘light’, ‘extra’, ‘fresh’, ‘hyper light’ for goods that can be extremely light (decision of 27/06/2001, R 1215/00-3, Hyperlite). In addition, figures may refer to the quality of a product or a service, such as 24/7 for service availability; ‘2000’, which refers to the size of the motor or ‘75’, which refers to the horse power (kW) of the motor.

Quantity

This covers indications of the quantity in which the goods could be sold, such as ‘six pack’ for beer, ‘one litre’ for drinks, ‘100’ (grams) for chocolate bars. Only quantity measurements relevant in trade, not those that are hypothetically possible, count. For example, 99.999 for bananas would be acceptable.

Intended purpose

The intended purpose is the function of a product or service, the result that is expected from its use or, more generally, the use for which the good or service is intended. An example is ‘Trustedlink’ for goods and services in the IT-sector aimed at securing a safe (trusted) link (judgment of 26/10/2000, T-345/99, Trustedlink, EU:T:2000:246). Marks that have been refused registration on this basis include ‘Therapy’ for massage tools (decision of 08/09/1999, R 0144/99-3, THERAPY) and ‘Slim belly’ for fitness training apparatus, sport activities, medical and beauty care services (judgment of 30/04/2013, T-61/12, Slim belly, EU:T:2013:226). This objection also applies as regards accessories: a term that described the type of goods also describes the intended purpose for accessories to those goods. Therefore, ‘New Born Baby’ is liable to objection for accessories for dolls and ‘Rockbass’ for accessories for rock guitars (judgment of 08/06/2005, T-315/03, Rockbass, EU:T:2005:211 (appeal C-301/05 P settled)).

Value

This covers both the (high or low) price to be paid, as well as the value in quality. It therefore does not only refer to expressions such as ‘extra’ or ‘top’, but also expressions such as ‘cheap’ or ‘more for your money’. It also includes expressions indicating, in common parlance, goods or services that are superior in quality.

Geographical origin

See paragraph 2.6 below.

Time of production of the goods or of rendering of the service

This covers expressions concerning the time at which services are rendered, either expressly (‘evening news’, ‘24 hours’) or in a usual manner (24/7). It also covers the time at which goods are produced if that is relevant for the goods (late vintage for wine). For wine, the numeral ‘1998’ indicating the vintage year would be relevant, but not for chocolate.

Other characteristics

This covers other characteristics of the goods or services and shows that the preceding list of items in Article 7(1)(c) is not exhaustive. In principle, any characteristic of the goods and services must lead to a refusal under Article 7(1)(c) EUTMR. It does not matter whether the characteristics of the goods or services are commercially essential or merely ancillary or whether there are synonyms of those characteristics (judgments of 12/02/2004, C-363/99, Postkantoor, EU:C:2004:86, § 102; 24/04/2012, T-328/11, EcoPerfect, EU:T:2012:197, § 41).

Examples of ‘other characteristics’

- the subject matter contained within the goods or services for which protection is sought: (see paragraph 2.7 below)

- the identification of the targeted consumer: ‘children’ for *bread* (judgment of 18/03/2016, T-33/15, BIMBO, EU:T:2016:159) or ‘ellos’ (judgment of 27/02/2002, T-219/00, Ellos, EU:T:2002:44) for *clothing*.

2 Word marks

2.1 One word

Descriptive terms are those that merely consist of information about the characteristics of the goods and services. This means that descriptive terms cannot fulfil the function of a trade mark. Consequently, the ground for refusal applies irrespective of whether a term is already used by other competitors in a descriptive manner for the goods and services at issue.

In particular, a word is descriptive if either for the general public (if the goods or services target them) or for a specialised public (irrespective of whether the goods or services also target the general public) the trade mark has a descriptive meaning:

- The term ‘RESTORE’, is descriptive for surgical and medical instruments and apparatus; stents; catheters; and guide wires (judgment of 17/01/2013, C-21/12 P, Restore, EU:C:2013:23)
- ‘CONTINENTAL’ is descriptive for ‘live animals, i.e., dogs’ and ‘the keeping and breeding of dogs, i.e. puppies and animals for breeding’. Indeed, the word ‘Continental’ indicates a breed of bulldogs (judgment of 17/04/2013, T-383/10, Continental, EU:T:2013:193).
- ‘TRILOBULAR’ is descriptive for screws. It would be immediately perceived by professionals as describing the fact that the screw is made up of three lobes, and thus describes a quality or characteristic, which is, moreover fundamental, of those goods (judgment of 18/11/2015, T-558/14, TRILOBULAR, EU:T:2015:858, § 32).

Furthermore, as seen above, objections should also be raised against terms that describe desirable characteristics of the goods and services.

However, it is important to distinguish laudatory terms that describe — although in general terms — desirable characteristics of goods and services as being cheap, convenient, of high quality, etc. and which are excluded from registration, from those terms that are laudatory in a broader sense, that is to say, they refer to vague positive connotations or to the person of the purchaser or producer of the goods without specifically referring to the goods and services themselves.

Not descriptive:

- ‘BRAVO’, as it is unclear who says ‘BRAVO’ to whom, and what is being praised (judgment of 04/10/2001, C-517/99, Bravo, EU:C:2001:510).

2.2 Combinations of words

As a general rule, a **mere combination of elements**, each of which is descriptive of characteristics of the goods or services themselves, remains descriptive of those

characteristics. Merely bringing those elements together without introducing unusual variations, in particular as to syntax or meaning, cannot result in anything other than a descriptive sign.

However, if due to the **unusual nature of the combination** in relation to the goods or services a combination creates an **impression that is sufficiently far removed** from that produced by the mere combination of meanings lent by the elements of which it is composed, that combination will be considered **more than the sum of its parts** (judgment of 12/02/2004, C-265/00, *Biomild*, EU:C:2004:87, § 39 and 43). These notions, ‘unusual nature of the combination’, ‘impression sufficiently far removed’ and ‘more than the sum of its parts’ have to be interpreted as meaning that Article 7(1)(c) EUTMR does not apply when the way in which the two descriptive elements are combined is in itself fanciful.

The following examples have been **refused** registration:

- ‘Biomild’ for yoghurt being mild and organic (judgment of 12/02/2004, C-265/00, *Biomild*, EU:C:2004:87);
- ‘Companyline’ for insurance and financial affairs (judgment of 19/09/2002, C-104/00 P, *Companyline*, EU:C:2002:506);
- ‘Trustedlink’ for software for e-commerce, business consulting services, software integration services and education services for e-commerce technologies and services (judgment of 26/10/2000, T-345/99, *Trustedlink*, EU:T:2000:246);
- ‘Cine Comedy’ for the broadcast of radio and television programmes, production, showing and rental of films, and allocation, transfer, rental and other exploitation of rights to films (judgment of 31/01/2001, T-136/99, *Cine Comedy*, EU:T:2001:31);
- ‘Teleaid’ for electronic devices for transferring speech and data, repair services for automobiles and vehicle repair, operation of a communications network, towing and rescue services and computing services for determining vehicle location (judgment of 20/03/2002, T-355/00, *Tele Aid*, EU:T:2002:79);
- ‘Quickgripp’ for hand tools, clamps and parts for tools and clamps (judgment of 27/05/2004, T-61/03, *Quick-Grip*, EU:T:2004:161);
- ‘Twist and Pour’ for hand held plastic containers sold as an integral part of a liquid paint containing, storage and pouring device (judgment of 12/06/2007, T-190/05, *Twist & Pour*, EU:T:2007:171);
- ‘CLEARWIFI’ for telecommunications services, namely high-speed access to computer and communication networks (judgment of 19/11/2009, T-399/08, *Clearwifi*, EU:T:2009:458);
- ‘STEAM GLIDE’ for electric irons, electric flat irons, electric irons for ironing clothes, parts and fittings for the aforementioned goods (judgment of 16/01/2013, T-544/11, *Steam Glide*, EU:T:2013:20);
- ‘GREENWORLD’ for, inter alia, gas fuels, fuels, electric power, gas for lighting, retail services in the areas of fuels, transmission and transport of electrical

energy, heat, gas or water (judgment of 27/02/2015, T-106/04, Greenworld, EU:T:2015:123);

- 'Greenline' for goods in Classes 1, 5, 6, 8, 20 and 21 that can conform to a philosophy of care for the environment (decision of 30/03/2007, R 125/2007-2 'GREENLINE', § 15-22)
- 'ecoDOOR' for products on which doors have a significant impact, such as dishwashers, washing machines, vending machines, apparatus for cooking (judgment of 10/07/2014, C-126/13 P, EcoDoor, EU:C:2014:2065).

In the same way, combinations of the **prefix 'EURO'** with purely descriptive terms must be refused where the 'EURO' element reinforces the descriptiveness of the sign as a whole or where there is a reasonable connection between that term and the goods or services concerned. This is in line with the judgment of 07/06/2001, T-359/99, EuroHealth, EU:T:2001:151.

The following examples have been **accepted for** registration:

- GREENSEA for goods and services in Classes 1, 3, 5 and 42;
- MADRIDEXPORTA for Classes 16, 35, 36, 38, 39, 41 and 42 (judgment of 16/09/2009, T-180/07, Madridexporta, EU:T:2009:334);
- DELI FRIENDS for Classes 29, 30 and 35.

Combinations not following grammatical rules

A combination of words can be considered a descriptive indication even though it does not follow the usual grammatical rules. If, however, the combination does amount to more than the mere sum of its parts, it may be acceptable (judgment of 17/10/2007, T-105/06, WinDVD Creator, EU:T:2007:309, § 34).

- 'HIPERDRIVE' is considered descriptive of the intended purpose of setting devices for tools, despite the misspelling of the adjective 'hyper' as 'hiper' (judgment of 22/05/2014, T-95/13, Hiperdrive, EU:T:2014:270, § 33-42).
- 'CARBON GREEN' is descriptive for reclaimed rubber, namely, recycled carbonaceous materials, namely plastic, elastomeric, or rubber filled materials obtained from pyrolysed tire char and plastic, elastomeric, or rubber compounds formulated using such filler material, even though adjectives precede nouns in English (judgment of 11/04/2013, T-294/10, Carbon green, EU:T:2013:165).

Furthermore, in the world of advertising, definite articles and pronouns (the, it, etc.), conjunctions (or, and, etc.) or prepositions (of, for, etc.) are frequently omitted. This means that a lack of these grammatical elements will sometimes not be sufficient to make the mark distinctive.

Combinations of adjectives + nouns or verbs

For combinations consisting of **nouns and adjectives**, it should be assessed whether the meaning of the combination changes if its elements are inverted. For example, 'Vacations direct' (not registrable, decision of 23/01/2001, R 0033/2000-3) is tantamount to 'direct vacations', whereas 'BestPartner', is not the same thing as 'PartnerBest'.

The same reasoning applies to words consisting of the **combination of an adjective and a verb**. Therefore, the word ‘ULTRAPROTECT’ must be considered descriptive for sterilising and sanitary preparations, even though it consists of the combination (grammatically incorrect) of an adjective (ULTRA) with a verb (PROTECT), since its meaning remains clearly understandable (decision of 03/06/2013, R 1595/2012-1; see also judgment of 06/03/2012, T-565/10, Highprotect, EU:T:2012:107).

Combinations of words in different languages

Combinations made up of words from different languages may still be liable to objection if the relevant consumers will understand the descriptive meaning of all the elements without further effort. This may be the case, in particular, when the sign contains basic terms in a language that will be understood easily by the speakers of another language, or if the terms are similar in both languages. For instance, if a mark is composed of one basic descriptive term belonging to language ‘A’ and another descriptive word in language ‘B’, the sign as a whole will remain descriptive when it is assumed that the speakers of language ‘B’ will be able to grasp the meaning of the first term.

Applications that consist of descriptive words or expressions repeated in various languages are a special case in the sense that they are mere translations of each other. These trade marks should be considered descriptive if the relevant consumer will grasp that each of the words or expressions is in fact merely the translation of a descriptive meaning, for example, because the proximity of the terms contained in the mark to each other will lead the consumer to understand that they all have the same descriptive meaning in different languages. For instance:

- EUTM No 3 141 017 ‘Le salon virtuel de l’industrie — Industry virtual exhibition — Die virtuelle Industriemesse — Il salon virtuale dell’industria — El salon virtual de la industria’ for services in Classes 35, 38 and 42.

The following examples have been **refused** registration:

- EUTM No 12 596 169 ‘BABYPATAUGEOIRE’ for Classes 20 and 42 related to chairs and design of chairs for babies. The sign is composed of an EN and a FR term that will be immediately understood by the French-speaking part of the public (the term ‘baby’ will be understood by the French-speaking part of the public).
- ‘EURO AUTOMATIC PAIEMENT’, for Classes 9 and 36 (judgment of 05/09/2012, T-497/11, Euro automatic paiement, EU:T:2012:402, combination of English and French terms).

2.3 Misspellings and omissions

A misspelling does not necessarily change the descriptive character of a sign. First of all, words may be misspelt due to influences of another language or the spelling of a word in non-EU areas, such as American English, in slang or to make the word more fashionable. Examples of signs that have been refused:

- ‘Xtra’ (decision of 27/05/1998, R 0020/1997-1),
- ‘Xpert’ (decision of 27/07/1999, R 0230/1998-3),
- ‘Easi-Cash’ (decision of 20/11/1998, R 0096/1998-1),
- ‘Lite’ (judgment of 27/02/2002, T-79/00, Lite, EU:T:2002:42),

- ‘Rely-able’ (judgment of 30/04/2013, T-640/11, Rely-able, EU:T:2013:225),
- ‘FRESHHH’ (judgment of 26/11/2008, T-147/06, Freshhh, EU:T:2008:528).

Furthermore, consumers will, without further mental steps, understand the ‘@’ as the letter ‘a’ or the word ‘at’ and the ‘€’ as the letter ‘e’. Consumers will replace specific numerals by words, for example, ‘2’ as ‘to’ or ‘4’ as ‘for’.

However, if the misspelling is fanciful and/or striking or changes the meaning of the word (accepted: ‘D’LICIOUS’, EUTM No 13 729 348 (instead of ‘delicious’), ‘FANTASTICK’, EUTM No 13 820 378 (instead of ‘fantastic’)), the sign is acceptable.

As a rule, misspellings endow the sign with a sufficient degree of distinctive character when:

- they are striking, surprising, unusual, arbitrary and/or,
- they are capable of changing the meaning of the word element or require some mental effort from the consumer in order to make an immediate and direct link with the term that they supposedly refer to.

The following marks were refused:

Sign	Reasoning	Case
<p>ACTIVMOTION SENSOR</p> <p>EUTM No 10 282 614 for goods in Class 7 (swimming pool and spa cleaning equipment, namely, sweepers, vacuums, and parts therefor)</p>	<p>The mark merely consists of ‘ACTIV’, an obvious misspelling of the word ‘ACTIVE’, ‘MOTION’ and ‘SENSOR’. Combined, the words form a perfectly comprehensible and plainly descriptive combination, and was thus refused.</p>	<p>Decision of 06/08/2012, R 0716/2012-4 – ‘ACTIVMOTION SENSOR’, § 11</p>
<p>XTRAORDINARIO</p> <p>International registration designating the EU No 930 778, for goods in Class 33 (tequila)</p>	<p>The above term is a non-existent word but closely resembles the Spanish adjective ‘extraordinario’. Spanish and Portuguese consumers will perceive the sign as a misspelling of a word meaning ‘remarkable’, ‘special’, ‘outstanding’, ‘superb’ or ‘wonderful’, and as such, attribute a descriptive meaning to the sign.</p>	<p>Decision of 08/03/2012, R 2297/2011-5 – ‘Xtraordinario’, § 11-12</p>

However, the following marks were **accepted**:

Sign	Reasoning	Case
<p>LINQ</p> <p>EUTM No 1 419 415 covering goods and services in Classes 9 and 38</p>	<p>This word is an invented word, not existing in any known dictionary, and it was not shown that this word is a common misspelling used in the trade circles of interest to the appellant. Additionally, because the word is short, the ending letter ‘Q’ will be noticed as a peculiar element, and thus the fanciful spelling is obvious</p>	<p>Decision of 04/02/2002, R 0009/2001-1 – ‘LINQ’, § 13</p>
<p>LIQID</p> <p>EUTM No 5 330 832 initially covering goods in Classes 3, 5 and 32</p>	<p>In this word mark, the combination ‘QI’ is highly uncommon in the English language, as the letter ‘Q’ is normally followed by a ‘U’. The striking misspelling of the word ‘liquid’ would allow even a consumer in a hurry to notice the peculiarity of the word ‘LIQID’. Furthermore, the spelling would not only have an effect on the visual impression produced by the sign, but also the aural impression, as the sign applied for will be pronounced differently from the word ‘liquid’.</p>	<p>Decision of 22/02/2008, R 1769/2007-2 – ‘LIQID’, § 25</p>

2.4 Abbreviations and acronyms

Abbreviations of descriptive terms are in themselves descriptive if they are used in that way, and the relevant public, whether general or specialised, recognises them as being identical to the full descriptive meaning. The mere fact that an abbreviation is derived from a descriptive term is not sufficient (judgment of 13/06/2014, T-352/12, Flexi, EU:T:2014:519).

The following signs were refused because the descriptive meaning for the relevant public could clearly be shown:

- SnTEM (judgment of 12/01/2005, T-367/02 to T-369/02, SnTEM, SnPUR & SnMIX, EU:T:2005:3),
- TDI (judgment of 03/12/2003, T-16/02, TDI, EU:T:2003:327 (appeal C-82/04 P was settled),
- LIMO (judgment of 20/07/2004, T-311/02, Limo, EU:T:2004:245),
- BioID (judgment of 05/12/2002, T-91/01, BioID, EU:T:2002:300 (appeal C-37/03 P set aside Court judgment and dismissed decision of 2nd BoA)).

Note that use of internet databases such as ‘AcronymFinder.com’ as a reference base should be made with the greatest care. Use of technical reference books or scientific literature is preferable, for example, in the field of computing. Alternatively, use of the abbreviation by a number of traders in the appropriate field on the internet is sufficient to substantiate actual use of the abbreviation.

Signs consisting of an independently non-descriptive acronym that precedes or follows a descriptive word combination should be objected to as descriptive if it is perceived by the relevant public as merely a word combined with an abbreviation of that word combination, for example ‘Multi Markets Fund MMF’. This is because the acronym and word combination together are intended to clarify each other and to draw attention to the fact that they are linked (judgment of 30/06/2009, T-285/08, Natur-Aktien-Index, EU:T:2009:230, § 32 and 40). This will be the case even where the acronym does not account for the mere ‘accessories’ in the word combination, such as articles, prepositions or punctuation marks, demonstrated in the following examples:

- ‘NAI – Der Natur-Aktien-Index’,
- ‘The Statistical Analysis Corporation – SAC’.

While the above rule will cover most cases, not all instances of descriptive word combinations juxtaposed with an abbreviation of that word will be considered descriptive as a whole. This will be the case where the relevant public will not immediately perceive the acronym as an abbreviation of the descriptive word combination, but rather as a distinctive element that will make the sign as a whole more than the sum of its individual parts, as demonstrated in the following example:

- ‘The Organic Red Tomato Soup Company — ORTS’.

2.5 Slogans

A slogan gives rise to an objection under Article 7(1)(c) EUTMR when it immediately conveys the kind, quality, intended purpose or other characteristics of the goods or services.

The criteria established by case-law for the purpose of determining whether a slogan is descriptive or not are identical to those applied in the case of a word mark containing only a single element (judgment of 06/11/2007, T-28/06, *Vom Ursprung her vollkommen*, EU:T:2007:330, § 21). It is inappropriate to apply criteria to slogans that are stricter than those applicable to other types of signs, especially considering that the term ‘slogan’ does not refer to a special subcategory of signs (judgment of 12/07/2012, C-311/11 P, *Wir machen das Besondere einfach*, EU:C:2012:460, § 26 and 40).

Example of a descriptive slogan

- An application in Class 9 (*satellite navigation systems*, etc.) for ‘FIND YOUR WAY’, (decision of 18/07/2007, R 1184/2006-4) was objected to under Article 7(1)(b) and (c) EUTMR. The expression FIND YOUR WAY in relation to the goods applied for in Class 9 is clearly intended to inform the relevant consumer that the appellant’s goods help consumers to identify geographical locations in order to find their way. The message conveyed by the sign applied for directly refers to the fact that consumers will discover the route for travelling from one place to another when using the specified goods.
- ‘BUILT TO RESIST’ could have only one possible meaning in relation to *paper, paper goods and office requisites* in Class 16, *leather, imitations of leather, travel articles not included in other classes and saddlery* in Class 18 and *clothing, footwear and headgear* in Class 25, namely that the goods are manufactured to last and are, therefore, tough and resistant to wear and tear (judgment of 16/09/2009, T-80/07, *Built to resist*, EU:T:2009:332, § 27-28).

Example of a non-descriptive slogan

- ‘WET DUST CAN’T FLY’ does not describe the way in which the cleaning preparations, appliances and services in Classes 3, 7 and 37 operate. Cleaning preparations are not designed to moisten dust in order to prevent it from dispersing, but to make the dirt disintegrate and disappear. Cleaning appliances filter the dust through liquids but are not designed to dampen the dust in order to prevent it from flying (judgment of 22/01/2015, T-133/13, *WET DUST CAN’T FLY*, EU:T:2015:46, § 23, 24 and 27).

2.6 Geographical terms

A geographical term is every existing name of a place, for example a country, region, city, lake or river. This list is not exhaustive. Adjectival forms are not sufficiently different from the original geographical term to cause the relevant public to think of something other than that geographical term (judgment of 15/10/2003, T-295/01, *Oldenburger*, EU:T:2003:267, § 39). For example, ‘German’ will still be perceived as referring to Germany, and ‘French’ will still be perceived as referring to France. Furthermore, outdated terms such as ‘Ceylon’, ‘Bombay’ and ‘Burma’ fall within this

scope if they are still commonly used or generally understood by consumers as a designation of origin.

It is in the **public interest** that signs that may serve to designate the geographical origin of goods or services remain available, not least because they may be an indication of the quality and other characteristics of the categories of goods concerned, and may also, in various ways, influence consumer preferences by, for instance, associating the goods or services with a place that may elicit a favourable response (judgments of 15/01/2015, T-197/13, MONACO, EU:T:2015:16, § 47; 25/10/2005, T-379/03, Cloppenburg, EU:T:2005:373, § 33).

This paragraph (2.6.) uses the words ‘geographical term’ to refer to **any** geographical indication in an EUTM application, whereas the terms ‘protected geographical indication’ and ‘protected designation or appellation of origin’ are used **only** in the context of specific legislation protecting them. Designations of origin and geographical indications protected under specific EU Regulations are dealt with under the section on Article 7(1)(j) EUTMR.

If the sign **contains other non-descriptive or distinctive elements**, the registrability of the combination (of the sign in its entirety) must be assessed in the same manner as in cases where descriptive elements are coupled with distinctive or non-descriptive elements (see paragraph 4 below).

Assessment of geographical terms

The registration of geographical names as trade marks is not possible where such a geographical name is either **already famous**, or is **known for the category of goods concerned**, and is therefore **associated** with those goods or services in the mind of the relevant class of persons, or it is **reasonable to assume** that the term may, in view of the relevant public, designate the geographical origin of the category of goods and/or services concerned (judgments of 15/01/2015, T-197/13, MONACO, EU:T:2015:16, § 51; 25/10/2005, T-379/03, Cloppenburg, EU:T:2005:373, § 38).

As with all other descriptive terms, the test is whether the geographical term **describes objective characteristics of the goods and services**. The assessment must be made with reference to the goods and services for which protection is sought and with reference to the perception by the relevant public. The descriptive character of the geographical term may relate to:

- the place of production of the goods;
- the subject matter of a good (e.g. the city or region a travel guide is about);
- the place where the services are rendered;
- the kind of cuisine (for restaurants); or
- the place that influences consumer preferences (e.g. lifestyle) by eliciting a favourable response (15/01/2015, T-197/13, MONACO, EU:T:2015:16, § 47 and Cloppenburg, EU:T:2005:373, § 33).

The above list is not exhaustive.

a) *First step: term understood by the relevant public*

The **first step** in assessing a geographical term is to determine whether it is understood as such by the relevant public. Article 7(1)(c) EUTMR does not in principle preclude the registration of geographical names that are unknown to the relevant public

— or at least unknown as the designation of a geographical location (15/01/2015, T-197/13, MONACO, EU:T:2015:16, § 49; T-379/03, Cloppenburg, EU:T:2005:373, § 36). Whether or not this is the case will be determined by taking as a basis a reasonably well-informed consumer who has sufficient common knowledge but is not a specialist in geography. For an objection to be raised, the Office must prove that the geographical term is known by the relevant public as designating a place (15/01/2015, T-197/13, MONACO, EU:T:2015:16, § 51).

- b) *Second step: term designates a place associated with the goods and services or it is reasonable to assume that it may designate the geographical origin of the goods and services*

The **second step** is to determine whether the geographical term applied for designates a place that **is currently** associated with the claimed goods or services in the mind of the relevant public or whether **it is reasonable to assume** that it will be associated with those goods or services in the future (judgment of 04/05/1999, C-108/97 & C-109/97, Chiemsee, EU:C:1999:230, § 31), or that such a name may, in the mind of the relevant public, designate the geographical origin of that category of goods or services (15/01/2015, T-197/13, MONACO, EU:T:2015:16, § 51, T-379/03, Cloppenburg, EU:T:2005:373, § 38).

In establishing whether such an association exists, the Court has clarified that the following **factors** should be taken into account (judgment of 04/05/1999, C-108/97 & C-109/97, Chiemsee, EU:C:1999:230, § 32 and 37, T-379/03, Cloppenburg, EU:T:2005:373, § 38 *in fine*):

- the degree of familiarity of the relevant public with the geographical term
- the characteristics of the place designated by the term, and
- the category of goods or services.

For example, ‘Milano’ should be refused for *clothing*, Switzerland for *financial services* and Islas Canarias for *tourist services*.

It is **not necessary** to establish that the name actually designates the **true** geographical origin of the goods. It is enough to demonstrate that the connection between the name of the place and the goods may enable the relevant public to perceive the contested sign as an indication of the origin of those goods (judgment of 15/10/2003, T-295/01, Oldenburger, EU:T:2003:267, § 43).

With regard to terms for which it is **reasonable to assume** that they may designate the geographical origin of the goods and services concerned, Article 7(1)(c) EUTMR refusal cannot be based solely on the argument that the goods or services can theoretically be produced or rendered in the place designated by the geographical term (judgment of 08/07/2009, T-226/08, Alaska, EU:T:2009:257). The abovementioned factors should be assessed (degree of familiarity of the relevant public with the geographical term, the characteristics of the place designated by the term, and the category of goods or services). In particular, such an assessment must take into account the **relevance** of the geographical origin of the goods in question, and the **customs of the trade** in using geographical names to indicate the origin of the goods or to refer to certain qualitative and objective criteria of the goods.

Sign	Reasoning	Case
BRASIL	The Board recognised that the mere existence of	Decision of

Sign	Reasoning	Case
Class 32: Beers; Mineral and aerated waters and other non-alcoholic beverages; Fruit beverages and fruit juices; Syrups and other preparations for making beverages. Class 33: Whisky; whisky-based beverages.	whisky production in Brazil was not sufficient in itself to presume that relevant consumers of whisky will associate the sign with the goods. However, it had to be assessed whether it was reasonable to assume that such an association might be established in the future. The BoA assessed a number of factors, including the fact that it is current practice in trade to indicate the geographical origin of whiskies and whisky-based beverages. It concluded that the designation 'Brasil' would be understood as an informative indication for whisky and whisky-based beverages (para. 29).	29/04/2014, R 434/2013-1, Brasil

Sign	Reasoning	Case
THE SPIRIT OF CUBA	The Court considered that the sign would be understood by the relevant public as a reference to the alcoholic spirit of Cuba or to an alcoholic beverage from Cuba, despite the structure of the sign ('the', singular form, 'of' instead of 'from') (para. 26)	T-207/13, The Spirit of Cuba, EU:T:2014:570
Class 33: Alcoholic beverages.		

Sign	Reasoning	Case
PORT LOUIS	The Court annulled a BoA decision because it had not established that the city of Port Louis (capital of the Republic of Mauritius) was sufficiently known by the relevant public of the former colonial powers of France and the United Kingdom. Nor was it established that Port Louis had a reputation for the relevant goods (textile manufacture) amongst the relevant public (paras 40-54)	T-230/06, Port Louis, EU:T:2008:443
Classes 18, 24 and 25		

Geographical terms that are **merely allusive or fanciful should not be objected to on** this basis. For example, while the North Pole and Mont Blanc are commonly known geographical terms, they would not be understood in the context of ice cream or sports cars as possible places of production, but as merely allusive and fanciful terms. The same applies to the fashionable use of city/country names for goods and services unrelated to what the city/country is known for (e.g. 'Hollywood' for *chewing gum*, 'Greenland' for *fresh fruits and vegetables* (R 691/2000-1, GREENLAND), 'Sudan' for *paints* (R 594/1999-2, SUDAN), and 'Denver' for *lighting equipment* (R 2607/2011-2, DENVER)) and the use of names of fashionable suburbs or shopping streets ('Champs Élysées' for *bottled water*, 'Manhattan' for *tomatoes*). The same applies by analogy to 'Port Louis' for *textiles*.

Finally, there are some geographical terms, such as **major geographical places or regions as well as countries**, which may be refused merely because of their **widespread recognition and fame for the high quality** of their goods or services. In such cases no detailed assessment of the association between the place and the goods and services is necessary (judgment of 15/12/2011, T-377/09, *Passionately Swiss*, EU:T:2011:753, § 43-45).

Sign	Reasoning	Case
Passionately Swiss	The Court held that BoA did not need to go into a detailed assessment of the association between the sign and each of the goods and services. It based its finding on Switzerland's reputation for quality, exclusiveness and comfort, which can be associated with the services in Classes 35, 41, 43 and 44 and the goods in Class 16 (para. 45).	Judgment of 15/12/2011, T-377/09, Passionately Swiss, EU:T:2011:753

Sign	Reasoning	Case
MONACO	The Court found that the word 'monaco' corresponds to the name of a globally known principality, not least due to the renown of its royal family and its organisation of a Formula 1 Grand Prix and a circus festival. The Court considered that the trade mark MONACO had to be refused for goods and services in Classes 9, 16, 39, 41 and 43 as the word 'monaco' could be used, in trade, to designate origin, geographical destination or the place of supply of services. The trade mark was thus descriptive for the goods and services concerned.	Judgment of 15/01/2015, T-197/13, MONACO, EU:T:2015:16
PARIS	BoA established that 'PARIS' is likely to be associated with a certain idea of quality, design, stylishness and even of being avant-garde. This results in a positive feeling, an expectation with regard to the quality of the goods sold and the services provided, when 'PARIS' is put forward as an indication of geographical origin or destination.	Decision of 26/10/2015, R 3265/2014-4, Paris

The mere fact that a geographical term is used by only one producer is not sufficient to overcome an objection, although it is an important argument to be taken into account in assessing acquired distinctiveness.

2.7 Terms describing subject matter in goods or services

Where a sign consists exclusively of a word that describes what may be the subject matter or content of the goods or services in question, it should be objected to under Article 7(1)(c) EUTMR. Commonly known terms likely to be linked to a particular thing, product or activity by the relevant public are capable of describing subject matter and should therefore be kept free for other traders (judgment of 12/06/2007, T-339/05, Lokthread, EU:T:2007:172, § 27).

The essential question is whether the sign applied for **may be used in trade in relation to the goods or services applied for** in a manner that will be undoubtedly perceived by the relevant public as descriptive of the subject matter of those goods or services for which protection is sought, and should therefore be kept free for other traders.

For example, a widely known name such as 'Vivaldi' will immediately create a link to the famous composer, just as the term 'skis' will immediately create a link to the sport of skiing. While Class 16 (books) is a prime example of a category of goods which contains subject matter or content, an objection made under this section may occur also with respect to other goods and services, such as recorded DVDs or editorial services. With regard to this section, the terms 'subject matter' and 'content' are used

interchangeably. See also the Guidelines, Part B, Examination, Section 4, Absolute Grounds for Refusal, Chapter 3, Non-Distinctive trade marks (Article 7(1)(b) EUTMR), paragraph 3.

Names of famous persons (in particular musicians or composers) can indicate the category of goods, if due to wide spread use, the time lapse, the date of death, or the popularisation, recognition, multiple performers, or musical training, the public can understand them as generic. This would be the case, for example, with respect to 'Vivaldi', whose music is played by orchestras all over the world and the sign 'Vivaldi' will not be understood as an indicator of origin for music.

Objections based on the above:

- will apply only to goods (e.g. books) or services (e.g. education) that contain subject matter regarding other things, products and/or activities (e.g. a book about history, or an educational course on history),
- when the sign consists exclusively of the word identifying that subject matter (e.g. 'VEHICLES' or 'HISTORY'), and
- will be made on a case-by-case basis by assessing multiple factors, such as the relevant public, the degree of attention or the descriptive character of the term in question (see below).

Goods and services that may contain subject matter

For most cases, the goods or services that may consist of or contain subject matter that give rise to an objection are the following:

- Class 9: *software, electronic publications (downloadable)*.
 - Give rise to an objection
 - STATISTICAL ANALYSIS for software
 - ROCK MUSIC for CDs.
- Class 16: Printed matter, photographs and teaching materials as long as these include printed matter.
 - Give rise to an objection
 - HISTORY for books
 - PARIS for travel guides
 - CAR for magazines
 - ANIMALS for photographs
 - TRANSCENDENTAL MEDITATION for *instructional and teaching material*.
- Class 28: Board *games*
 - Give rise to an objection
 - 'Memory' (14/03/2011, C-369/10 P, Memory, EU:C:2011:148).

- Class 35: Trade fairs, advertising, retail services.
 - Give rise to an objection
 - ELECTRONICA for trade fairs related to electronic goods (judgment of 05/12/2000, T-32/00, *Electronica*, EU:T:2000:283, § 42-44)
 - LIVE CONCERT for advertising services
 - CLOTHING for retail services.
- Class 41: Education, training, entertainment, electronic publications (non-downloadable).
 - Give rise to an objection
 - GERMAN for language courses
 - HISTORY for education
 - COMEDY for television programmes
 - TRANSCENDENTAL MEDITATION for *education services*.

The above list of Nice classes is not exhaustive, although it will apply to the vast majority of cases. Consequently, objections based on descriptive subject matter should be raised primarily in the context of the goods and services listed above.

Where the sign applied for is a descriptive term for a particular characteristic of goods or services, a designation of goods or services that excludes that particular characteristic described by the sign applied for will not avoid an objection based on subject matter. This is because it is unacceptable for an applicant to make a claim of goods or services subject to the condition that they do not possess a particular characteristic (judgment of 12/02/2004, C-363/99, *Postkantoor*, EU:C:2004:86, § 114-116). The following invented examples illustrate designations of goods or services that will not avoid an objection:

- COMEDY for television broadcasting, except for comedy *programming*
- PENGUINS (in plural!) for books, except for books about *penguins*
- TECHNOLOGY for classes, except for classes about computers and *technology*.

Distinguishable from the examples above are positive claims of goods or services, under which it is impossible for the sign applied for to describe any subject matter or content. For example, the following invented examples would not be liable to objection, at least with regards to signs being descriptive of subject matter:

- COMEDY for television broadcasting of economic news, politics and *technology*
- PENGUIN for comic books with country western, medieval and ancient Roman *themes*
- TECHNOLOGY for classes about creative fiction *writing*.

2.8 Single letters and numerals

Single letters¹

General considerations

In its judgment of 09/09/2010, C-265/09 P, α , EU:C:2010:508, the Court stated that when examining absolute grounds for refusal, the Office is required, under Article 76(1) EUTMR, to examine, of its own motion, the relevant facts which might lead it to raise an objection under Article 7(1) EUTMR and that that requirement cannot be made relative or reversed, to the detriment of the EUTM applicant (paras 55-58). Therefore, it is for the Office to explain, with motivated reasoning, why a trade mark consisting of a single letter represented in standard characters is descriptive.

Consequently, when examining single letter trade marks, generic, unsubstantiated arguments such as those relating to the availability of signs, given the limited number of letters, should be avoided. Similarly, it would not be appropriate to base an objection on speculative reasoning as to the different meanings that a sign could possibly have. The Office is obliged to establish, **on the basis of a factual assessment**, why the trade mark applied for would be liable to objection.

It is therefore clear that the examination of single letter trade marks should be thorough and stringent, and that each case calls for a careful examination.

Examples

For instance, in **technical domains** such as those involving computers, machines, motors and tools, it may be that particular letters have a descriptive connotation if they convey sufficiently precise information about the goods and/or services concerned.

The **letter ‘E’** was also considered to be descriptive in respect of *wind power plants and parts thereof, generators, rotor blades for wind power plants, rotors for wind power plants* in Class 7, *control switches for wind power plants, frequency converters, measuring, signalling and checking (supervision) instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity* in Class 9 and *towers for wind power plants* in Class 19, since it may be seen as a reference to energy or electricity (judgment of 21/05/2008, T-329/06, E, EU:T:2008:161, § 24-31; decisions of 08/09/2006, R 394/2006-1, 22-26 and of 09/02/2015, R 1636/2014-2).

An objection might be justified also in respect of goods and/or services meant for a broader public. For example, **the letters ‘S’, ‘M’ or ‘L’** for clothing would give rise to an objection as these letters are used to describe a particular size of clothing, namely as abbreviations for ‘Small’, ‘Medium’ or ‘Large’.

However, if it cannot be established that a given single letter is descriptive for the goods and/or services concerned, and provided that the applied for trade mark is not

¹ This part deals with single letters under Article 7(1)(c) EUTMR. For single letters under Article 7(1)(b) EUTMR, see the Guidelines, Part B, Examination, Section 4, Absolute Grounds for Refusal, Chapter 3, Non-Distinctive trade marks (Article 7(1)(b) EUTMR), paragraph 5.

open to objection under another provision of Article 7(1) EUTMR, then the application should be **accepted**.

See the Guidelines, Part B, Examination, Section 4, Absolute Grounds for Refusal, Chapter 3, Non-Distinctive trade marks (Article 7(1)(b) EUTMR), paragraph 5.2 for further examples of where an objection under Article 7(1)(b) EUTMR may be raised.

Numerals

In its judgment of 10/03/2011, C-51/10 P, 1000, EU:C:2011:139, the Court of Justice ruled that signs composed exclusively of numerals with no graphic modifications may be registered as trade marks (paras 29-30).

The Court referred by analogy to its previous judgment of 09/09/2010, C-265/09 P, α , EU:C:2010:508, in respect of single letters (para. 31) and emphasised that trade marks consisting of numerals must be examined by with specific reference to the goods and/or services concerned (para. 32).

Therefore, a numeral may be registered as a European Union trade mark only if it is distinctive for the goods and services covered by the application for registration (para. 32) and is not merely descriptive or otherwise non-distinctive for those goods and services.

For example, the Boards confirmed the refusal of the trade marks ‘15’ (decision of 12/05/2009, R 72/2009-2, 15) and ‘60’ (decision of 23/09/2015, R 553/2015-4, 60) applied for for ‘clothing, footwear, headgear’ in Class 25. The board considered in the first case that that the numeral ‘15’ is linked directly and specifically to these goods, as it contains obvious and direct information regarding their size (paras 15-22). In the second decision, it held that indication of size 60, whether it exists or might exist, would naturally be understood and connected to measurement (size) by the relevant public (para. 19).

The Board also confirmed the refusal of the sign ‘15’ for ‘beers’ in Class 32, as practical experience of the marketing of the relevant goods — relied upon by the Office — showed that a number of very strong beers with an alcohol content of 15 % volume exist on the EU market (decision of 12/05/2009, R 72/2009-2 ‘15’, § 15-22).

It is well known that numerals are often used to convey relevant information as to the goods and/or services concerned. For example, in the following scenarios an objection would apply on the ground that the sign applied for is descriptive since it refers to:

- the **date** of production of goods/provision of services, when this factor is relevant in respect of the goods/services concerned. For instance, 1996 or 2000 for *wines* would give rise to an objection, since the age of the wine is a very relevant factor when it comes to the purchasing choice; 2020 would give rise to an objection also for *events* as it could be considered the year of an event.
- **size**: in addition to the previous examples 15 and 60 for clothing, 1 600 for cars, 185/65 for tyres, 10 for women’s clothing in the UK, 32 for women’s clothing in France
- **quantity**: 200 for cigarettes
- **telephone codes**: 0800 or 0500 in the UK, 800 in Italy, 902 in Spain, etc.

- the **time** of provision of services: 24/7
- the **power** of goods: 115 for engines or cars
- **alcoholic content**: 4.5 for lager, 13 for wines
- the **number of pieces**: 1 000 for puzzles.

However, where the numeral does not appear to have any possible meaning for the goods and services, it is acceptable, that is to say, '77' for *financial services* or '333' for *clothing*.

2.9 Names of colours

Name of colours can be **single colour** names (ex: red, green...), **compound colour** names (ex: navy blue, blood red...) or more **unusual** colour names. Among unusual colour names, there are names of objects, gemstones, flowers or similar elements (ex: magnolia, emerald, amethyst, alabaster,) and combination of colour associated with another noun (ex: flamenco red, crystal pink, vintage rose, Bermuda blue).

A sign consisting exclusively of the name of a colour must be objected to under Article 7(1)(c) EUTMR when the application claims any **goods and services for which the colour can reasonably be perceived by the public as a description of one of its characteristics**.

For example, the name of the colour BLUE in relation to cheese describes a specific kind of cheese; the colour GREEN describes a specific kind of tea or environmentally-friendly services. The name of the colour BROWN in relation to sugar describes the colour and kind of the sugar. This rule applies mainly to common colours, for example, primary colours or SILVER and GOLD.

The following guidelines should generally be applied:

- **Where colour is a typical feature of the goods and relevant for consumer choice**, such as clothing and motor cars, colour names such as CYAN, EMERALD or APRICOT, which, although having alternative meanings, are recognised as having a strong connotation with definite colours, and **should be objected to**.

Where the name of a colour is **combined with a reference to a possible texture, sheen or finish**: SMOKY GRAY, SANDY BROWN, METALLIC BLUE, MATT GOLD, BRILLIANT BRONZE, etc., and the combination represents a typical feature of the goods and is relevant for consumer's choice, the sign will be objected to inasmuch as it describes the colour and finish/sheen/texture of the respective goods.

When the goods for which protection is sought **concern colorants such as paint, ink, dyes or cosmetics** (e.g. lipsticks or make-up) the name of a colour may describe the actual colour of the goods, and signs consisting exclusively of a colour should be objected to under Article 7(1)(c) EUTMR. In these cases, names of colours would not be seen as trade marks but merely as indications of the principal characteristic of the goods.

- **Where the colour does not have a sufficiently strong colour connotation to overwhelm the other non-colour meaning should generally not be objected to** if they are not likely to be perceived as having a colour meaning with respect to the goods or services for which protection is sought (decision of 12/12/2013, 7 950 C). For instance words such as FLAMINGO.

Colours in combination with other words may be registrable if the sign as a whole is distinctive: ICE COFFEE, VANILLA ICE and MISTY BLUE.

Dictionary words that are descriptive of colours but obscure and unlikely to be used by others can be accepted: LUNA (alchemists' name for silver) and CARNELIAN (an alternative name for CORNELIAN, a red gem stone that is less well known).

Examples

Rejected trade marks:

Sign	Reasoning	Case
CYAN	'CYAN' has the sort of direct and concrete link with the goods in question by which the relevant public can immediately and without further reflection perceive the mark as a description of a characteristic of the goods (Classes 12, 14, 16, 18 and 25)	Decision of 26/05/2016 R 2588/2015-5
CERAMIC WHITE	Class 9 products (smartphones, PDAs, TV receivers etc.)	EUTM 14 497 986

Accepted trade marks:

Sign	Reasoning	Case
OPAL BLUE	for software in Class 9. There is no link between an opal-blue colour and the computer application software applied for. Computer software is a programme used to operate computers which by its very nature is colourless. There is also no indication that colours are used to indicate specific types or versions or any other features of computer software and nothing was brought forward by the examiner in this respect.	Decision of 31/08/2016, R 664/2016-4

2.10 Names of banks, newspapers/magazines and airports

In some fields, such as banks, newspapers, magazines and airports, consumers are accustomed to recognising descriptive combinations of terms as badges of origin.

This is due to the market reality whereby a sign composed of different elements has the capacity to **identify a specific entity**. It is the case, for example, of a sign that describes an entity which is the only one to offer the respective goods and/or services.

The following marks were **accepted**:

Sign	Case
BANK OF ENGLAND Classes 6,8,9,14,16,18,21,28,30,35,36,41,42,45	EUTM 11 157 641

Sign	Case
DIARIO DE LAS PROVINCIAS DE VALENCIA Classes 16, 35	EUTM 54 619

Sign	Case
AEROPORT TOULOUSE-BLAGNAC Classes 16,35,36,37,38,39,41,42,43,45	EUTM 13 952 346

Nevertheless, descriptive combinations give rise to an objection when they do not create, at least prima facie, the impression of a clearly identifiable entity. It is the case when the sign refers to a general category and not a specific unique entity.

The following marks were refused:

Sign	Reasoning	Case
CHARITY BANK Classes 9, 35 and 36	The sign as a whole merely indicates that the goods and services are provided by a bank that focuses on charity more than other banks that may also support charity activities.	EUTM 4 454 872
European PrivateTrust BANK Class 36	The expression taken as a whole immediately informs consumers without further reflection that the services applied for are insurances, financial and monetary services, etc., that are rendered by a European non-public trust bank that is organized to perform the fiduciary of trusts and agencies.	EUTM 11 585 908

Sign	Reasoning	Case
JOURNAL OF OPTOMETRY Classes 19 and 41	The relevant consumer will not see the sign as something unusual but rather as a meaningful expression: a publication related to the world of optometry with its technological projection and the knowledge of the mentioned science.	EUTM 6 646 996
HEALTH JOURNAL Classes 16 and 38	The consumers will see the sign as an indication of the good itself.	EUTM 1 524 396

Sign	Reasoning	Case
<p>ALICANTE-AIRPORT</p> <p>Class 35</p>	<p>The expression is not the official denomination of the main airport next to the city of Alicante. The expression ‘alicante-airport’ immediately informs consumers without further reflection that the services applied for are from an airport in the city or province of Alicante. Therefore, the mark conveys obvious and direct information regarding the geographical origin of rendering of the services in question.</p>	<p>EUTM 15 140 676</p>

2.11 Names of hotels

In the hotel sector, hotel names are often the combination of the word ‘HOTEL’ together with a geographical term (i.e. the name of an island, a city, a country etc.). They usually indicate specific establishments that **do not have any link with the geographical term they refer to**, since they are not situated in that specific location. Consequently, due to these trade habits, consumers would not perceive expressions such as ‘HOTEL BALI’, ‘HOTEL BENIDORM’ or ‘HOTEL INGLATERRA’ as descriptive indications (describing that the services are provided by a hotel that is situated in that specific location) but rather as badges of origin.

Indeed, such expressions are not equivalent to the grammatically correct ones ‘HOTEL IN BALI’, ‘HOTEL DE BENIDORM’ or ‘HOTEL EN INGLATERRA’, which clearly give rise to an objection. This is even truer in cases where the hotel name consists of the names of two different cities, (or of two geographical terms in general), for example ‘HOTEL LONDRES SAN SEBASTIAN’. Indeed, in this case the presence of the wording SAN SEBASTIAN (a city in the north of Spain) clearly indicates that ‘HOTEL LONDRES’ must be regarded as a fanciful expression. Therefore, no objection should be raised.

Nevertheless, in those **cases where the geographical term precedes the word ‘HOTEL’, the situation may change according to the different languages**. For example, in English the wording ‘BALI HOTEL’, would be perceived as an expression merely indicating any hotel located in the island of Bali, which clearly gives rise to an objection. Consequently, each case should be assessed on its own merits. Finally, descriptive combinations such as ‘LEADING HOTELS’ give rise to an objection since they do not create, at least prima facie, the impression of a clearly identifiable entity.

2.12 Combinations of names of countries/cities with a number indicating a year

Marks that are the combination of the name of a country/city with a number indicating a year must be refused under Article 7(1)(b) and (c) EUTMR **for the goods and services for which protection is sought when the sign is perceived by the relevant consumers as describing an event happening that specific year in the designated geographic location**.

As an example, the mark ‘GERMANY 2006’ would have been immediately perceived as a reference to an event that was going to take place in 2006. It has been considered as a descriptive indication for a wide list of goods and services, ranging from *unexposed films* in Class 1 to *vehicle maintenance* in Class 37. In particular, the decision in case R 1467/2005-1 of 21/07/2008 stated that this mark:

- is descriptive of the kind and content of those services ‘of actually preparing, organising and promoting an event in Germany in 2006’ (*ibidem*, para. 29, referring to the organisation of sporting events related to or associated with football championships, etc.);
- is descriptive of ‘the purpose and thereby in part the level of quality of goods or services, during such competitions in Germany in the year 2006, as being suitable for competitions of the highest standard or that it has been successfully used in the context of such competitions’ (*ibidem*, para. 30, referring to medical instruments, soccer balls, etc.);
- qualifies the goods as souvenir articles (*ibidem*, para. 31, referring to goods such as stickers, confetti, pyjamas, etc.).

With regard to **souvenir articles**, the Board underlined that ‘merchandising and co-branding is not limited to ‘classic’ souvenir products. It is public knowledge that there is a tendency to try to find new markets by combining various goods with the brand of some other unrelated popular event or names’ (*ibidem*, para. 34, referring to goods such as eyeglasses, televisions, toilet paper, etc., all related to or associated with football championships).

If the sign is not linked to any event in particular, it would only be descriptive if it is immediately perceived by the relevant public as providing information about the goods and services such as the place and time of production or destination of the goods and services.

However, for all cases where the year is very far in the past or in the future and the combination is purely fanciful, it will not be perceived as a descriptive combination and no objection will be raised by the Office.

2.13 INN codes

International Non-proprietary Names (INN) are assigned to pharmaceutical substances by the World Health Organisation (WHO), so that each substance can be recognised by a unique name. These names are needed for the clear identification, safe prescription and dispensing of medicines, and for communication and exchange of information among health professionals. INNs can be used freely because they are in the public domain. Examples of INNs are alfacalcido, calcifediol, calcipotriol.

Stems define the pharmacologically related group to which the INN belongs. INN stems serve to indicate the mode of action of groups of drugs. These stems and their definitions have been selected by WHO experts and are used when selecting new international non-proprietary names. An example of a stem is ‘calci’.

The criteria for assessing the descriptiveness of a trade mark for pharmaceuticals are no different from those applicable to other categories of trade marks. The provisions of trade mark law apply to pharmaceuticals in the same way as to other categories of goods. The European Medicines Agency (EMA) assesses the single name under which a medicinal product will be marketed as part of its marketing authorisation for the European Union. EMA’s assessment is based on public health concerns and takes into account the WHO World Health Assembly resolution (WHA46.19) on protection of INNs/INN stems to prevent any potential risk of confusion. The Office’s assessment of

the registrability of pharmaceutical trade marks, however, has no specific legal basis for taking such health-related concerns into consideration (by analogy, judgment of 05/04/2006, T-202/04, Echinaid, EU:T:2006:106, § 31-32).

Considering the descriptive nature of INN codes and stems, an objection should be raised for Class 5 in the following scenarios:

- where the EUTM is an INN (the general rules on misspellings also apply, see paragraph 2.3 above); or
- where an INN appears within an EUTM and the other elements of the EUTM are descriptive/non-distinctive too (for instance BIO, PHARMA, CARDIO, MED, DERMA); or
- where the EUTM consists only of a stem.

A list of INN codes can be accessed after online registration on MedNet (<https://mednet-communities.net>). A list of common stems is available at the following link: http://www.who.int/medicines/services/inn/StemBook_2011_Final.pdf.

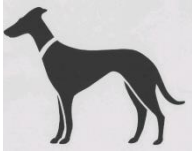

Office practice is to accept figurative trade marks containing INN codes or stems, applying the same criteria as to any other figurative trade mark containing descriptive word elements (i.e. whether the stylisation and/or the graphical features of a sign are sufficient for it to act as a trade mark).

An objection may also be based on Article 7(1)(g) EUTMR in the unlikely scenario that the list of goods in Class 5 refers to a different kind of drug from that covered by the INN. Where the list in Class 5 includes *pharmaceuticals*, the Office assumes good faith and no objection under Article 7(1)(g) EUTMR will be raised.

3 Figurative marks

Signs represented in languages other than Latin, Greek or Cyrillic are considered for formality purposes as figurative trade marks. However, this does not mean that the semantic content of these signs will not be taken into consideration for the purpose of the application of Article 7(1)(c).

Where a figurative mark consists exclusively of a basic natural form that is not significantly different from a true-to-life portrayal that serves to indicate the kind, intended purpose or other characteristic of the goods or services, it should be objected to under Article 7(1)(c) EUTMR as descriptive of a characteristic of the goods or services in question.

Sign	Case
	Judgment of 08/07/2010, T-385/08, Representation of a dog EU:T:2010:295
	Judgment of 08/07/2010, T-386/08, Representation of a horse, EU:T:2010:296


In these cases the Court held that for goods in Classes 18 and 31, the depiction of a dog or horse, respectively, serves to indicate the type of animal for which the goods are intended.

In the first case, the Court noted that the goods in Class 18 were specially produced for dogs, such as dog leads, dog collars and other dog accessories including bags. In the field of animal accessories, it is common practice for true-to-life or stylised but realistic portrayals of animals to be used for indicating the type of animal concerned. Therefore, for the goods in Class 18, the relevant public will immediately perceive the image's message that those goods are for dogs, without any further mental steps. The portrayal of a dog, therefore, indicates an essential characteristic of the goods concerned. The sign applied for is, therefore, descriptive (paras 25-28).

The same applies to goods in Class 31. As foodstuffs for domestic animals include dog food, the mark applied for is a descriptive indication for the goods at issue that will be immediately understood by the relevant public (para. 29).

In the second case, the Court held that for *clothing, headgear and belts* in Class 25, the portrayal of a horse was descriptive of the kind or intended purpose of the goods, namely that they are particularly developed or suitable for horse riding. As the relevant public would make a direct link between a horse and horse riding, the Court maintained that there was an immediate and concrete link between the portrayal of a horse and the goods concerned (paras 35-38).

By way of example, the sign below was held to be sufficiently highly stylised to significantly differ from a true-to-life portrayal serving to indicate the kind or intended purpose of the goods or services, and, thus, was registered.

Sign	EUTM No	Goods and services
	EUTM No 844	Classes 1, 3, 5, 6, 7, 8, 9, 11, 16, 17, 18, 19, 20, 21, 22, 26, 28, 31, 41, 42


4 Figurative threshold

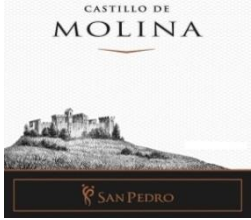
4.1 Preliminary remarks

Terms or signs that are non-distinctive, descriptive or generic may be brought out of the scope of a refusal based on Article 7(1)(b), (c) or (d) EUTMR if combined with other elements that make the sign as a whole distinctive. In other words, refusals based on Article 7(1)(b), (c) and/or (d) may not apply to signs consisting of a non-distinctive, descriptive or generic element combined with other elements that take the sign as a whole beyond a minimum level of distinctiveness.

In practice this means that one of the main questions that the Office must answer is whether the mark is figurative enough to reach the minimum degree of distinctive character that is required for registration.

Finally, the fact that a sign contains figurative elements does not prevent it from still being misleading or contrary to public order or accepted principles of morality or from falling under other grounds of refusal, such as those set forth by Article 7(1)(h), (i), (j) (k), (l) and (m) EUTMR.

Sign	EUTM No	Goods and services
	<p>EUTM No 8 384 653</p>	<p>Classes 33, 35 and 39</p>
<p>(09/03/2012, T-417/10, ¡Que buena ye! Hijoputa, EU:T:2012:120)</p> <p>The application was rejected since 'Hijoputa' is an offensive and vulgar word in Spanish. The application was considered to be against accepted principles of morality (irrespectively of the figurative elements of the sign) protected under Article 7(1)(f) EUTMR.</p>		

Sign	EUTM No	Goods and services
	<p>EUTM No 11 402 781</p>	<p>Class 33</p>
<p>The application was refused on the basis of Article 7(1)(j) EUTMR, because it contains the protected geographical indication for wines 'MOLINA' (protected under the agreement <i>establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part</i>). The distinctive figurative elements of the sign are irrelevant.</p>		

4.2 Assessment of the figurative threshold

The presence of figurative elements may give distinctive character to a sign consisting of a descriptive and/or non-distinctive word element so as to render it eligible for registration as an EUTM. Therefore, the question to be considered is whether the stylisation and/or the graphical features of a sign are sufficiently distinctive for the sign to act as a badge of origin.

In the framework of the European Trade Mark and Design Network (ETMDN), the Office and a number of trade mark offices in the European Union have agreed on a Common Practice in relation to when a figurative mark, containing purely descriptive/non-distinctive words, should pass the absolute grounds examination

because the figurative element renders sufficient distinctive character (also referred to as Convergence Project 3 or CP3 Practice)².

The Common Practice establishes criteria to determine if the threshold of distinctiveness is met due to the figurative features in the mark. They regard:

- **Word elements** such as typeface and font, combination with colour, punctuation marks and/or other symbols, or how the words are placed (sideways, upside-down, etc.);
- **Figurative elements** such as the use of simple geometric shapes, the position and proportion (size) of the figurative element(s) in relation to the word elements, or whether the figurative element is a representation of, or has direct link with, the goods and/or services, and whether the figurative element is commonly used in trade for the goods and/or services applied for;
- **Both word and figurative elements** and how combinations of the criteria affect distinctiveness.

These criteria are explained in the following paragraphs.

Moreover, the Common Practice includes a number of examples. Some of them are included in the paragraphs below (marked as 'CP3 example'). The signs containing 'Flavour and aroma' seek protection for *coffee* in Class 30, the signs containing 'Fresh sardine' and 'Sardines' seek protection for *sardines* in Class 29, the sign containing 'DIY' seeks protection for *kits of parts for assembly into furniture* in Class 20, the signs containing 'Pest control services' seek protection for *pest control services* in Class 37, and the sign containing 'Legal advice services' seeks protection for *legal services* in Class 45.

In addition to the CP3 examples agreed by the Office and a number of trade mark offices in the European Union, the following paragraphs also include examples of EUTMs examined by the EUIPO.

A. Word elements in a mark

i. Typeface and font

In general, descriptive/non-distinctive word elements appearing in basic/standard typeface, lettering or handwritten style typefaces — with or without font effects (bold, italics) — are not registrable.

² See Common Communication on the Common Practice of Distinctiveness – Figurative Marks containing descriptive/non-distinctive words, available at <https://www.tmdn.org/network/documents/10181/278891cf-6e4a-41ad-b8d8-1e0795c47cb1>


Non-distinctive examples:


Sign	Example
Fresh Sardine	CP3 example
<i>Fresh Sardine</i>	CP3 example
FrEsh SaRdine	CP3 example
<i>Flavour and aroma</i>	CP3 example
Flavour and aroma	CP3 example
<i>Flavour and aroma</i>	CP3 example

Sign	Case	Goods and services
Foamplus	R 0655/2007-1	Classes 1,3,7,17,22,37
<i>Superleggera</i>	T-464/08 EU:T:2010:212	Classes 12,18,25
<i>Crema di Balsamico</i>	EUTM No 5 225 156	Classes 29, 30

Where standard typefaces incorporate elements of graphic design as part of the lettering, those elements need to have sufficient impact on the mark as a whole to render it distinctive. When these elements are sufficient to distract the attention of the consumer from the descriptive meaning of the word element or likely to create a lasting impression of the mark, the mark is registrable.

Distinctive examples:

Sign	Example
	CP3 example
FLAVOUR AND AROMA	CP3 example
DIY	CP3 example





Sign	Case	Goods and services
	EUTM No 13 448 097	Classes 5,9,11,37,42,45




ii. Combination with colour

The mere 'addition' of a single colour to a descriptive/non-distinctive word element, either to the letters themselves or as a background, will not be sufficient to give the mark distinctive character.

Use of colours is common in trade and would not be seen as a badge of origin. However, it cannot be excluded that a particular arrangement of colours, which is unusual and can be easily remembered by the relevant consumer, could render a mark distinctive.

Non-distinctive examples:


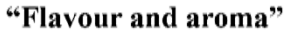
CP3 examples







Sign	Case	Goods and services
	EUTM No 7 147 689	Classes 9, 38
	T-494/13 EU:T:2014:1022	Classes 35,39,42
	T-202/15 EU:T:2015:914	Classes 9, 28, 41

iii. Combination with punctuation marks and other symbols

In general, the addition of punctuation marks or other symbols commonly used in trade does not add distinctive character to a sign consisting of descriptive/non-distinctive word elements.

Non-distinctive examples:

CP3 examples



Sign	Case	Goods and services
	T-91/01	Classes 9,38,42
	R 1451/2015-4	Classes 3,4,14,16,18,20,21,25,30,32,33

iv. Position of the word elements (sideways, upside-down, etc.)

In general, the fact that the word elements are arranged in vertical, upside-down or in one or more lines is not sufficient to endow the sign with the minimum degree of distinctive character that is necessary for registration.

Non-distinctive examples:

CP3 examples
Flavour and Aroma
Flavour and Aroma
Flavour and Aroma

Sign	Case	Goods and services
NOTFALL CREME	T-504/12	Classes 3, 5
natural beauty	T-559/10	Class 3

However the way in which the word elements are positioned can add distinctive character to a sign when the arrangement is of such a nature that the average consumer focuses on it rather than immediately perceiving the descriptive message.

Distinctive examples:

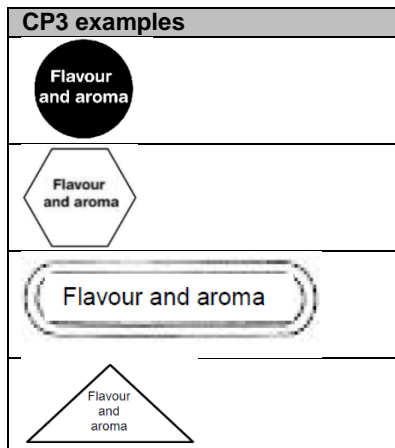
CP3 examples
F d l n a m v o r u A r
And r Flavour m a

B. Figurative elements (word element(s) and additional figurative element(s))

i. Use of simple geometric shapes

Descriptive or non-distinctive verbal elements combined with simple geometric shapes such as points, lines, line segments, circles, triangles, squares, rectangles, parallelograms, pentagons, hexagons, trapezia and ellipses are unlikely to be acceptable, in particular when the abovementioned shapes are used as a frame or border.

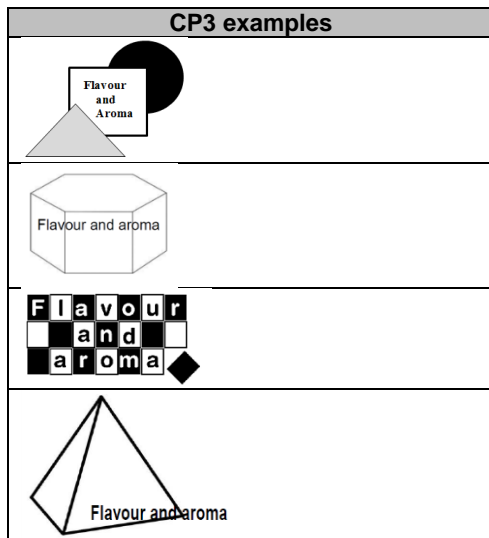
Non-distinctive examples:




Sign	Case	Goods and services
	T-520/12	Class 30
	EUTM No 6 039 119	Class 24
	EUTM No 11 387 941	Classes 9,35,41

However, geometric shapes can add distinctiveness to a sign when their presentation, configuration or combination with other elements creates a global impression that is sufficiently distinctive.

Distinctive examples:



Sign	Case	Goods and services
	EUTM No 13 899 455	Class 35

- ii. Position and proportion (size) of the figurative element in relation to the word element

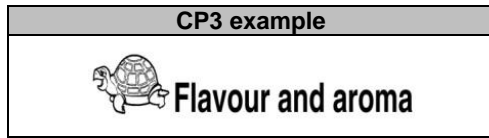
In general, when a figurative element that is distinctive on its own is added to a descriptive and/or non-distinctive word element, then the mark is registrable, provided that said figurative element is, due to its size and position, clearly recognisable in the sign.




Non-distinctive examples:



Sign	Case	Goods and services
<i>Tissue-Deluxe</i>	EUTM No 11 418 605	Classes 21, 24, 35
<i>Splendid*</i>	T-203/14	Classes 18, 25

Distinctive example:



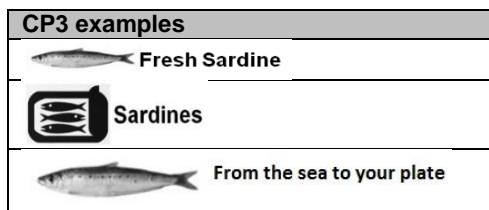
Sign	Case	Goods and services
	EUTM No 13 244 942	Classes 11, 37
	EUTM No 15 184 799	Classes 35, 41, 45
	EUTM No 13 906 458	Classes 12, 39

- iii. the figurative element is a representation of, or has a direct link with, the goods and/or services



A figurative element is considered to be descriptive and/or devoid of distinctive character whenever:

- it is a true-to-life portrayal of the goods and services;
- it is a symbolic/stylised — portrayal of the goods and services that does not depart significantly from the common representation of said goods and services.

Non-distinctive examples:

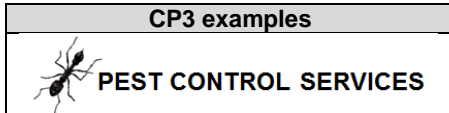







Distinctive examples:

Sign	Example
	CP3 example
	CP3 example

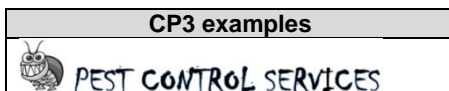
A figurative element that does not represent the goods and services but has a direct link with the characteristics of the goods and services will not render the sign distinctive, unless it is sufficiently stylised.





Non-distinctive example:



Sign	Case	Goods and services
	EUTM No 10 909 307	Classes 18, 21, 28, 31
	EUTM No W 1 131 046	Classes 36, 42, 45
	EUTM No W 874 778	Classes 9, 11
	EUTM No 14 512 784	Classes 11, 28, 37, 42
	EUTM No 14 584 262	Classes 9, 42

Distinctive example:

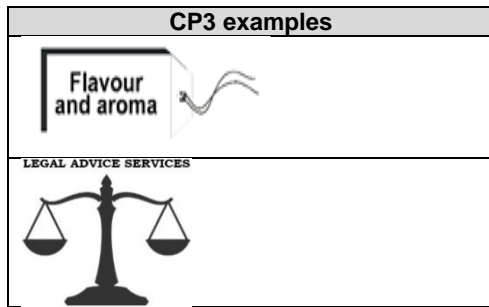


Sign	Case	Goods and services
	EUTM No 13 847 827	Classes 5, 31
	EUTM No 13 433 784	Classes 37,41,42
	R 1983/2014-2	Class 11
	EUTM No 13 893 871	Classes 29, 31

- iv. The figurative element is commonly used in trade in relation to the goods and/or services applied for

In general, figurative elements that are commonly used or customary in trade in relation to the goods and/or services claimed do not add distinctive character to the mark as a whole.

Non-distinctive examples:



Sign	Case	Goods and services
	EUTM No 116 434	Class 32
	EUTM No T-122/01	Classes 35, 37, 42
	EUTM No W 01 116 291	Classes 29, 30, 43
	R 1191/2015-5	Classes 16, 29, 30, 35

C. Word and figurative elements (stylised word elements and additional figurative element(s))

In general, a combination of figurative and word elements, which if considered individually are devoid of distinctive character, does not give rise to a distinctive mark.

Nevertheless, a combination of such elements when considered as a whole could be perceived as a badge of origin due to the presentation and composition of the sign. This will be the case when the combination results in an overall impression that is sufficiently far removed from the descriptive/non-distinctive message conveyed by the word element.

Examples: In order for a sign to be registrable, it must have a minimum level of distinctiveness. The purpose of the scale is to illustrate where that threshold is. The

examples below from left to right contain elements with an increasing impact on the distinctiveness of the marks, resulting in marks which are either non-distinctive in their totality (red column) or distinctive in their totality (green column).

<p>1.</p> <p>Flavour and aroma Flavour and Aroma Flavour and aroma Flavour and Aroma</p>	
<p>2.</p> <p>Flavour and aroma</p>	
<p>3.</p> <p>Fresh sardine</p>	

Non-distinctive examples:

Sign	Case	Goods and services
	T-647/14	Classes 7, 8, 35
	T-522/14	Classes 3, 21, 30

Distinctive examples:

Sign	Case	Goods and services
	EUTM No 13 815 121	Classes 16, 21, 30
	EUTM No 14 585 939	Classes 29, 30, 32