

'Absolute Grounds' for Refusal of a EUTM Application

EUTM

European Union trade mark ("EUTM") is popular amongst trademark right owners as each EUTM can provide trade mark protection in 28 of the European Union territories as of year 2017.

'Absolute Grounds' for refusal

Once a EUTM application is submitted, it is then reviewed by the examination authority on formality requirements. If it is admitted on formality, it will further be substantially examined on the admissibility for trademark registration by the examination authority according to the Absolute Grounds for refusal.

Under the absolute grounds for refusal, the applications are examined *ex officio* by the Office (and which may take into account third parties' observations although third parties do not become parties to the proceedings).

According to Article 7(1) of European Union trade mark Rules ("EUTMR")

The following shall not be registered:

- (a) signs which do not conform to the requirements of Article 4;
- (b) trade marks which are devoid of any distinctive character;
- (c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service;
- (d) trade marks which consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade;
- (e) signs which consist exclusively of:
 - (i) the shape, or another characteristic, which results from the nature of the goods themselves;
 - (ii) the shape, or another characteristic, of goods which is necessary to obtain a technical result;
 - (iii) the shape, or another characteristic, which gives substantial value to the goods;
- (f) trade marks which are contrary to public policy or to accepted principles of morality;

- (g) trade marks which are of such a nature as to deceive the public, for instance as to the nature, quality or geographical origin of the goods or service;
- (h) trade marks which have not been authorised by the competent authorities and are to be refused pursuant to Article 6ter of the Paris Convention for the Protection of Industrial Property ('Paris Convention');
- (i) trade marks which include badges, emblems or escutcheons other than those covered by Article 6ter of the Paris Convention and which are of particular public interest, unless the consent of the competent authority to their registration has been given;
- (j) trade marks which are excluded from registration, pursuant to Union legislation or national law or to international agreements to which the Union or the Member State concerned is party, providing for protection of designations of origin and geographical indications;
- (k) trade marks which are excluded from registration pursuant to Union legislation or international agreements to which the Union is party, providing for protection of traditional terms for wine;
- (l) trade marks which are excluded from registration pursuant to Union legislation or international agreements to which the Union is party, providing for protection of traditional specialities guaranteed;
- (m) trade marks which consist of, or reproduce in their essential elements, an earlier plant variety denomination registered in accordance with Union legislation or national law, or international agreements to which the Union or the Member State concerned is a party, providing for protection of plant variety rights, and which are in respect of plant varieties of the same or closely related species.

EUTM publication

Once the EUTM application is approved on the absolute grounds, it will be published in the EUTM Bulletin for opposition for a period of 3 months. If no opposition is filed, the application will be registered. The three-month period of opposition cannot be extended.