

- *A paper setting out existing methods of representation and description of new types of marks in SCT Members, identifying where there are areas of convergences and any issues raised including the possibility of additional costs, particularly in developing countries.*

The issue of non-conventional marks is not of the primary concern for the State Intellectual Property Office of the Republic of Croatia since for the time being the requests for the registration of such signs are sporadic and rare.

Nevertheless, we very much appreciate the effort of the Standing Committee and the State Offices more exposed to the registration of such signs to clarify the issue and to show the possible way of presentation of the non-conventional marks.

Surely that would help us in being more apt to the fast changes of trade market and the needs of our clients.

The Office is in an early stage of defining the methods of representation and description of new types of marks

When dealing with the requests, we are guided by the recent European jurisprudence: opinions and judgements of the European Court of Justice related to the distinctive character of non-conventional marks and their graphic representation:

#### Gesture, olfactory, taste, texture and feel marks

Trademarks Act of the Republic Croatia requires the graphic representation of signs. That proves to be a difficult requirement to fulfil for the gesture, olfactory, taste, texture and feel marks.

The Office for the time being has not received any requests for the registration of such marks.

If received, for those signs the criteria from the Sieckman case C-273/00 (2002) E.C.R. would be applied, and i.e. the clearness, preciseness, accessibility, intelligibility, durability and objectivity of graphic representation would be the basis for the mark to be registered.

#### Sound marks

For the sound marks, the musical notation determining the pitch and duration of the sounds is accepted for the graphic representation.

#### Color marks

The evidence of acquired distinctiveness is required since the color per se is not considered as inherently distinctive. For the graphic representation, the graphic presentation and the description in words is sufficient without codes requirements.

The combination of two colors can be accepted as distinctive per se if the combination or arrangement of colors is predetermined and described in words.

#### Holograms

Accepted for the registration and published as figurative marks.

#### Motion, multimedia and gesture marks

There are no special rules concerning these signs.

- *Established trademark principles to new types of marks. All principles including, inter alia, functionality, speciality and distinctiveness would be considered, as well as issues of public interest, including safeguarding the public domain.*

New types of marks like olfactory, sound, texture or motion signs although presented at the market, have not yet been perceived by the public as the usual way of distinguishing the goods and services of one undertaking from those of another undertaking.

Therefore the additional degree of distinctiveness would be necessary to consider those signs as the individualization of goods and services. In any way, if the non-conventional signs represent the nature or essential characteristics of the goods and service, they would be considered non-distinctive.