

Absolute grounds for refusal of Community trade mark applications

1. Introduction

This part, as the heading suggests, deals only with absolute grounds for refusal that are considered prior to the registration of a CTM. Absolute grounds for revocation (e.g. non-use) or for invalidity (e.g. an application being made in bad faith) are not included.

2. Legal basis

The grounds for refusal of an application are contained in Article 7 CTMR.¹ The text is as follows:

1. 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 which results from the nature of the goods themselves; or
 - (ii) the shape of goods which is necessary to obtain a technical result; or
 - (iii) the shape 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 authorized by the competent authorities and are to be refused pursuant to Article 6ter of the 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 appropriate authorities to their registration has been given.
- (j) trade marks for wines which contain or consist of a geographical indication identifying wines or for spirits which contain or consist of a geographical indication identifying spirits with respect to such wines or spirits not having that origin.
- (k) trade marks which contain or consist of a designation of origin or a geographical indication registered in accordance with Regulation (EEC) No 2081/92 when they correspond to one of the situations covered by Article 13 of the said Regulation and regarding the same type of product, on condition that the application for registration of the trade mark has been submitted after the date of filing with the Commission of the application for registration of the designation of origin or geographical indication.

2. Paragraph 1 shall apply notwithstanding that the grounds of non-registrability obtain in only part of the Community.

3. Paragraph 1 (b), (c) and (d) shall not apply if the trade mark has become distinctive in relation to the goods or services for which registration is requested in consequence of the use which has been made of it.

The text of Article 4 CTMR (which is referred to in Article 7(1)(a)) is as follows:

¹ Community Trade Mark Regulation (Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark) as amended

A Community trade mark may consist of any signs capable of being represented graphically, particularly words, including personal names, designs, letters, numerals, the shape of goods or of their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings.

3. Detailed Implementation

The detailed application of these legal provisions is set out in the OHIM Manual of Trade Mark Practice, Part B Examination, Section 7 which can be found at:
http://oami.europa.eu/ows/rw/resource/documents/CTM/legalReferences/partb_examination.pdf.