GUIDELINES FOR EXAMINATION

EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE (EUIPO)

Part B

Examination

Section 4 Absolute grounds for refusal

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Chapter 7

Trade marks contrary to public policy or acceptable principles of morality (Article 7(1)(f) EUTMR)

1 General Remarks

Article 7(1)(f) EUTMR excludes from registration trade marks that are contrary to public policy or to accepted principles of morality. Article 7(1)(f) EUTMR mirrors that of Article 6*quinquies*(B)(3) of the Paris Convention ([12]), which provides for the refusal of trade mark applications and for the invalidation of registrations where trade marks are 'contrary to morality or public order'.

The wording of Article 7(1)(f) EUTMR is very broad and allows a great deal of room for interpretation. A judicious application of this provision necessarily entails balancing the right of traders to freely employ words and images in the signs they wish to register as trade marks against the right of the public not to encounter disturbing, abusive, insulting and even threatening trade marks (06/07/2006, R 495/2005-G, SCREW YOU, § 14).

The rationale of Article 7(1)(f) EUTMR is not to identify and filter out signs whose use in commerce must at all costs be prevented, but to preclude trade marks from registration where granting a monopoly would contravene the state of law or would be perceived by the relevant public as going directly against the basic moral norms of society. In other words, the Office should not positively assist people who wish to further their business aims by means of trade marks that offend against certain basic values of civilised society (06/07/2006, R 495/2005-G, SCREW YOU, § 13).

The application of Article 7(1)(f) EUTMR is not limited by the principle of freedom of expression (Article 10, Freedom of expression, European Convention on Human Rights) since the refusal to register only means that the sign is not granted protection under trade mark law and does not stop the sign from being used — even in business (09/03/2012, T-417/10, ¡Que buenu ye! HIJOPUTA (fig.), EU:T:2012:120, § 26).

'Public policy' and 'accepted principles of morality' are two different concepts that often overlap.

The question whether the goods or services for which protection is sought can or cannot be legally offered in a particular Member State's market is irrelevant for the question as to whether the sign itself falls foul of Article 7(1)(f) EUTMR (13/09/2005, T-140/02, Intertops, EU:T:2005:312, § 33). Whether or not a mark is contrary to public policy or accepted principles of morality must be determined by the intrinsic qualities of the mark applied for, and not by the circumstances relating to the conduct of the person applying for the trade mark (13/09/2005, T-140/02, Intertops, EU:T:2005:312, § 28). In its judgment of 20/09/2011, T-232/10, Coat of Arms of the Soviet Union, EU:T:2011:498, the General Court held that the concepts of 'public policy' and 'acceptable principles of morality' must be interpreted not only with reference to the circumstances common to all Member States but by taking into account 'the particular circumstances of **individual Member States** which are likely to influence the perception of the relevant public within those States' (para. 34).

12 Paris Convention for the Protection of Industrial Property of 20 March 1883 (as amended on 28 September 1979).

The legislation and administrative practice of certain Member States can also be taken into account in this context (i.e. for assessing subjective values), not because of their normative value, but as evidence of facts that make it possible to assess the perception of the relevant public in those Member States (20/09/2011, T-232/10, Coat of Arms of the Soviet Union, EU:T:2011:498, § 57). In such a case, the illegality of the EUTM applied for is not the determining factor for the application of Article 7(1)(f) EUTMR, but rather is of evidential value with regard to the perception of the relevant public in the Member State(s) in question.

Considering that the specific circumstances of **individual** Member States may not be widely known in EU territory, the objection letter should explain these circumstances clearly in order to make sure that the applicant is able to fully understand the reasoning behind the objection and is able to respond accordingly.

2 `Public Policy'

2.1 Concept and categories

This objection derives from an assessment based on **objective criteria**. 'Public policy' is the body of all legal rules that are necessary for the functioning of a democratic society and the state of law. In the context of Article 7(1)(f) EUTMR, 'public policy' refers to the **body of EU law applicable in a certain area**, as well as to the legal order and the state of law as defined by the Treaties and secondary EU legislation, which reflect a common understanding of certain basic principles and values, such as human rights.

The following is a non-exhaustive **list of examples** of when signs will be caught by this prohibition.

- Trade marks that contradict the basic principles and fundamental values of the European Union political and social order and, in particular, the universal values on which the European Union is founded, such as human dignity, freedom, equality and solidarity and the principles of democracy and the rule of law, as proclaimed in the Charter of Fundamental Rights of the European Union (OJ C 83, 30/03/2010, p. 389).
- On 27/12/2001, the Council of the European Union adopted Common Position 2001/931/CFSP on the application of specific measures to combat terrorism (OJ L 344, 28/12/2001, p. 93), later updated by Council Decision (CFSP) 2017/1426 of 04/08/2017, updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Decision (CFSP) 2017/154 (OJ L 204, 05/08/2017, p. 95, consolidated version available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D1426&from=EN), which contains a list of individuals and groups facilitating, attempting to commit or committing terrorist acts

in EU territory. Any EUTM applied for that can be deemed to support or benefit an individual or a group on the list will be rejected as being against public policy.

3 Accepted Principles of Morality

This objection concerns **subjective values**, but these must be applied as objectively as possible by the examiner. The provision excludes registration as European Union trade marks of blasphemous, racist, discriminatory or insulting words or phrases, but only if that meaning is clearly conveyed by the mark applied for in an unambiguous manner; the standard to be applied is that of the reasonable consumer with average sensitivity and tolerance thresholds (09/03/2012, T-417/10, ¡Que buenu ye! HIJOPUTA (fig.), EU:T:2012:120, § 21).

The concept of accepted principles of morality refers to the fundamental moral values and standards to which a society adheres at a given time. Those values and norms are likely to change over time and vary in space (27/02/2020, C-240/18 P, Fack Ju Göhte, EU:C:2020:118, § 39).

The concept of morality in Article 7(1)(f) EUTMR is not concerned with bad taste or the protection of individuals' feelings. In order to fall foul of Article 7(1)(f) EUTMR, a trade mark must be perceived by the relevant public, or at least a significant part of it, as going directly against the fundamental moral values and standards of society.

It is not sufficient if the trade mark is only likely to offend a small minority of exceptionally puritanical citizens. Conversely, a trade mark should not be allowed to be registered simply because it would not offend the equally small minority at the other end of the spectrum who find even gross obscenity acceptable. The trade mark must be assessed by reference to the standards and values of ordinary citizens who fall between those two extremes (06/07/2006, R 495/2005-G, SCREW YOU, § 21).

The examination is to be based on the perception of a reasonable person with average thresholds of sensitivity and tolerance, taking into account the context in which the mark may be encountered and, where appropriate, the particular circumstances of the part of the Union concerned. To that end, elements such as legislation and administrative practices, public opinion and, where appropriate, the way in which the relevant public has reacted in the past to that sign or similar signs, as well as any other factor which may make it possible to assess the perception of that public, are relevant (27/02/2020, C-240/18 P, Fack Ju Göhte, EU:C:2020:118, § 42).

National legislation and practice of Member States are indicators to be taken into account in order to assess how certain categories of signs are perceived by the relevant public in those Member States (20/09/2011, T-232/10, Coat of Arms of the Soviet Union, EU:T:2011:498, § 58). However, the Office must not object to trade marks because of the mere fact that they are in conflict with national legislation and practice. National legislation and practice are considered to be **factual evidence** that enables an assessment of the perception of the relevant public within the relevant territory.

Examples of national legislation taken into account as evidence of a trade mark being contrary to accepted principles of morality:

- use of symbols and names of unconstitutional parties or organisations is prohibited in Germany (§ 86a dt. StGB (German Criminal Code), BGBl. No I 75/1998) and in Austria (§ 1 öst. Abzeichengesetz (Austrian Law on Insignias), BGBl. No 84/1960 in conjunction with § 1 öst. Verbotsgesetz (Austrian Prohibition Law), BGBl. No 25/1947);
- 'use of symbols of totalitarianism' (e.g. the sickle and hammer and the five-pointed red star), specifically in a way to offend the dignity of victims of totalitarian regimes and their right to sanctity is prohibited in Hungary (Section 335 of Act C of 2012 on the Criminal Code) (20/09/2011, T-232/10, Coat of Arms of the Soviet Union, EU:T:2011:498).

Signs that can be perceived as promoting the use of illegal drugs also fall under this provision. Taking into account, as factual evidence, that certain drugs are illegal in some Member States as well as the fact that the EU has undertaken drug policy initiatives to fight against illegal drugs, an objection should be raised. It is an objective indication that such signs would be perceived as going directly against the basic moral norms of society.

The assessment made will take into account the term used in the mark applied for or the presence of other elements that could be perceived as promoting the use of illegal drugs. However, an objection will not be raised if the sign contains a reference to a drug that is for medical use, as the mark would not fall, in principle, within the prohibition of Article 7(1)(f) EUTMR.

The examination of Article 7(1)(f) EUTMR should consider the **context** in which the mark is likely to be encountered, assuming normal use of the mark **in connection with the goods and services** covered by the application (06/07/2006, R 495/2005-G, SCREW YOU, § 21). Taking account of the goods and services for which registration of the mark is sought is normally necessary, since the relevant public may be different for different goods and services and, therefore, may have different thresholds with regard to what is clearly unacceptably offensive. For example, 'a person who is sufficiently interested in [sex toys] to notice the trade marks under which they are sold is unlikely to be offended by a term with crude sexual connotations' (06/07/2006, R 495/2005-G, SCREW YOU, § 29).

Nevertheless, although the Court has held that the goods and services for which protection is sought are important for identifying the relevant public whose perception needs to be examined, it has also made it clear that the **relevant public is not necessarily only that which buys the goods and services covered by the mark**, since a broader public than just the consumers targeted may encounter the mark (05/10/2011, T-526/09, PAKI, EU:T:2011:564, § 17-18). Accordingly, the commercial context of a mark, in the sense of the public targeted by the goods and services, is not always the determining factor in whether that mark would breach accepted principles of morality (09/03/2012, T-417/10, ¡Que buenu ye! HIJOPUTA (fig.), EU:T:2012:120, § 24; 26/09/2014, T-266/13, Curve, EU:T:2014:836, § 18-19).

Illegality is not a necessary condition for giving rise to a conflict with accepted principles of morality: there are words or signs that would not lead to proceedings before the relevant authorities and courts, but that are sufficiently offensive to the general public to not be registered as trade marks (01/09/2011, R 168/2011-1, fucking freezing! by TÜRPITZ (fig.), § 16). Furthermore, there is an interest in ensuring that children and young people, even if they are not the relevant public of the goods and services in question, do not encounter offensive words in shops that are accessible to the general public. Dictionary definitions will in principle provide a preliminary indication as to whether the word in question has an offensive meaning in the relevant language (01/09/2011, R 168/2011-1, fucking freezing! by TÜRPITZ (fig.), § 25), but the key factor must be the perception of the relevant public in the specific context of how and where the goods or services will be encountered.

However, the Boards of Appeal took the view that the word 'kuro' did not convey to the Hungarian public the offensive meaning of the word 'kúró' (meaning 'fucker' in English), since the vowels 'ó' and 'ú' are separate letters that are distinct from 'o' and 'u', which are pronounced differently and convey different meanings (22/12/2012, R 482/2012-1, kuro, § 12 et seq.).

There is a clear risk that the wording of Article 7(1)(f) EUTMR could be applied subjectively so as to exclude trade marks that are not to the examiner's personal taste. However, for the word(s) to be objectionable, it (they) must have a clearly offensive impact on people of normal sensitivity (09/03/2012, T-417/10, ¡Que buenu ye! HIJOPUTA (fig.), EU:T:2012:120, § 21).

There is no need to establish that the applicant **wants** to shock or insult the relevant public; the fact that the EUTM applied for **might** be seen, as such, to shock or insult is sufficient (23/10/2009, R 1805/2007-1, PAKI, EU:T:2011:564, § 27, confirmed 05/10/2011, T-526/09, PAKI, EU:T:2011:564, § 20 et seq.).

Finally, it is not only signs with a 'negative' connotation that can be offensive. The banal use of some signs with a **highly positive connotation** can also be offensive (e.g. terms with a religious meaning or national symbols with a spiritual and political value, like 'ATATURK' for the EU general public of Turkish origin (17/09/2012, R 2613/2011-2, ATATURK, § 31)).

Raising an objection when a trade mark is contrary to accepted principles of morality does not, however, prevent the sign from being also contrary to public policy (e.g. the trade mark may be perceived by the relevant public as directly contrary to the basic moral norms of society and, **at the same time**, may contradict the basic principles and fundamental values of the EU political and social order).

4 Examples

4.1 Examples of rejected EUTM applications

Sign	Relevant Consumer	Public policy/morality	Case No
BIN LADIN	General consumer	Morality and public policy — the mark applied for will be understood by the general public as the name of the leader of the notorious terrorist organisation Al Qaeda; terrorist crimes are in breach of public order and moral principles (para. 17).	29/09/2004 R 176/2004-2
CURVE	General consumer	Morality — 'Curve' is an offensive and vulgar word in Romanian (it means 'whores'). The relevant public is not limited only to the public to which the goods and services covered by the mark are **directly** addressed. 'Curve' equally offends other persons, who are confronted with the sign **accidentally** without being interested in these goods and services (para. 19). With regard to the word 'Curve'+ additions ['AIRCURVE'], see example below in this paragraph (R 203/2014-2).	T-266/13
	General consumer	Morality — 'fucking' is an offensive and vulgar word in English.	R 168/2011-1
	General consumer	Morality — 'HIJOPUTA' is an offensive and vulgar word in Spanish.	T-417/10

Sign	Relevant Consumer	Public policy/morality	Case No
	General consumer	Morality — the Hungarian Criminal Code bans certain 'symbols of despotism', including the hammer and sickle as well as the five-pointed red star symbolising the former USSR. This law is not applicable by reason of its normative value but rather as evidence of the perception of the relevant public (paras 59-63) ([13]).	T-232/10
PAKI	General consumer	Morality — 'PAKI' is a racist insult in English.	T-526/09
SCREW YOU	General consumer (for goods other than sex products)	Morality — a substantial proportion of ordinary citizens in Britain and Ireland would find the words 'SCREW YOU' offensive and objectionable (para. 26).	R 495/2005-G
FICKEN	General consumer	Morality — 'FICKEN' is an offensive and vulgar word in German (it means 'fuck').	14/11/2013, T-52/13, EU:T:2013:596
ATATURK	Average consumer in the EU general public of Turkish origin	Morality — banal use of signs with a highly positive connotation can be offensive under Article 7(1)(f) EUTMR. 'ATATURK' is a national symbol of spiritual and political value for the European general public of Turkish origin.	R 2613/2011-2
FUCK CANCER	General consumer	Morality — the word 'FUCK' is not only a 'slightly rude word' in combination with the word 'CANCER', but offensive and indecent, at least for the English-speaking part of the trade circles (para. 19).	23/02/2015, R 793/2014-2

13 The Hungarian Criminal Code, in force at the time of the judgment (20/09/2011), has been amended by Act C of 2012 to now encompass 'Use of Symbols of Totalitarianism', used 'specifically in a way to offend the dignity of victims of totalitarian regimes and their right to sanctity' (formerly Section 269/B, now Section 335 of the Hungarian Criminal Code).

Sign	Relevant Consumer	Public policy/morality	Case No
MECHANICAL APARTHEID	General consumer	Public policy — 'APARTHEID' refers to an offensive former political regime in South Africa that included state terror, torture and the denial of human dignity. The message conveyed by the sign for computer games, related publications and entertainment is contrary to the European Union's public policy, since it contradicts the indivisible, universal values on which the EU is founded, i.e. human dignity, freedom, physical integrity, equality and solidarity, and the principles of democracy and the rule of law (para. 30).	06/02/2015, R 2804/2014 -5
MH17 MH370	General consumer	Morality — acronyms of the flights. The intent to seek financial gain from what is universally accepted to be a tragic event that has resulted in the loss of many hundreds of lives, is unacceptable and contrary to accepted principles of morality.	EUTM 13 092 937 EUTM 12 839 486

Sign	Relevant Consumer	Public policy/morality	Case No
	General consumer	Public policy and morality — mafia-type organised crime is a clear and present threat to the whole of the EU. 'la Mafia' is understood world-wide as referring to a criminal organisation originating in Italy, whose activities extend to States other than the Italian Republic, inter alia, within the European Union. The referred criminal organisation resorts to intimidation, physical violence and murder in carrying out its activities, which include, inter alia, drug trafficking, arms trafficking, money laundering and corruption (para. 35). Such criminal activities breach the very values on which the European Union is founded, in particular the values of respect for human dignity and freedom as laid down in Article 2, Treaty of the European Union and Articles 2, 3 and 6 of the Charter of Fundamental Rights of the European Union (para. 36). The association in the mark of the word element 'la mafia' with the other elements of the contested mark is such to convey a globally positive image of the Mafia's activities and, so doing, to trivialise the perception of the criminal activities of that organisation (para. 46). (…) The contested mark is, therefore, likely to shock or offend not only the victims of that criminal organisation and their families, but also any person who, on EU territory, encounters that mark and has average sensitivity and tolerance thresholds (para. 47).	15/03/2018, T-1/17, EU:T:2018:146

Sign	Relevant Consumer	Public policy/morality	Case No
ETA	General consumer	Public policy and morality — 'ETA' will be immediately understood in Europe, in particular in Spain, as designating the terrorist group ETA (para. 2). ETA is included on the list of individuals and groups facilitating, attempting to commit or committing terrorist acts in EU territory (Council Common Position 2001/931/CFSP of 27/12/2001 on the application of specific measures to combat terrorism updated by Council Common Position 2009/64/CFSP) (para. 14). In a commercial context, the term 'ETA' has the inherent tendency to shock any normal person who hears or reads it and, in particular, members of the Spanish public who particularly keep that name in mind. The fact that ETA is not currently considered to be the biggest threat facing Spain according to an extract from a survey conducted in June 2015 provided by the applicant, does not mean that the term will not continue to be associated with the terrorist group in question in the mind of the public (para. 15).	27/06/2016, R 563/2016-2
	General consumer	Public policy and morality — the words 'KRITIKAL BILBO' identify a variety of plant of the 'cannabis' genus — also called 'marihuana' — which, due to its high content of tetrahydrocannabinol (THC), namely 21.47 %, is used to make marihuana (para 19). Cannabis with a high THC content is considered to be a narcotic that is prohibited in a large number of Member States (19/11/2009, T-234/06, Cannabis, EU:T:2009:448). Non-psychoactive substances are legal and the authorities can issue licences for their cultivation for those purposes. However, due to its high THC content, in this case the product concerned is not non-psychoactive, but is a substance for smoking that is strictly controlled in almost all European Union countries (para. 22).	27/10/2016, R 1881/2015-1

Sign	Relevant Consumer	Public policy/morality	Case No
	General consumer	Morality — the sign, containing the term 'weed' and applied for in Class 32, will be understood by the relevant consumer as glorifying the use of a drug (cannabis/marijuana) that is prohibited by law in many European countries.	EUTM 16 961 732
IBIZASKUNK	General consumer	Morality — applied for in Classes 5, 31 and 35. The sign, contains the term 'skunk' which refers to a cannabis strain with high THC. It will be perceived as a motivational/promotional message, which encourages an activity prohibited in many Member States of the EU, namely the consumption or sale of products containing SKUNK, as well as a banalisation of the aforementioned narcotic substance. The term IBIZA (known as a party location) reinforces the recreational message.	EUTM 18 97 102
	General consumer	The sign depicts cannabis leaves and also contains the term 'cannabis'. The application was filed for goods in Classes 30 and 32 and for services in Class 43. The Court considered that the fact that the sign would be perceived by the relevant public as an indication that the food and drink items contained narcotic substances, prohibited in many Member States, was sufficient to justify the refusal of the mark. It was not required that a sign encourage or trivialise the use of an illegal narcotic substance. As regards factors such as the accuracy of the depiction or the intention of the applicant to use the sign only for legal goods, the Court pointed out that the perception of the public was decisive and clarified that the intentions of the applicant did not play a role in the assessment.	EUTM 16 176 968 12/12/2019, T-683/18, EU:T: 2019:855

4.2 Examples of accepted EUTM applications

Sign	Relevant Consumer	Comment	Case No

KURO	General consumer	That a foreign term, name or abbreviation displays certain similarities with an offensive word (like 'kúró') is not in itself sufficient reason to refuse an EUTM application (para. 20). The Hungarian vowels 'ò' and 'ù' are clearly different from the unaccented vowels 'o' and 'u'. Furthermore, Hungarian words never end with an unaccented 'o' (paras 15-18).	R 482/2012-1
SCREW YOU	General consumer (for sex products)	A person entering a sex shop is unlikely to be offended by a trade mark containing crude, sexually charged language (para. 29).	R 495/2005-G
DE PUTA MADRE	General consumer	Although 'puta' means 'whore' in Spanish, the expression 'DE PUTA MADRE' means 'very good' in Spanish (slang).	EUTM 3 798 469 EUTM 4 781 662 EUTM 5 028 477

AIRCURVE	Specialised public (medical personnel; patients with breathing disorders)	The objectionable word 'Curve' ['whore', 'slut' in Romanian] is seamlessly attached to the English word 'AIR' to form 'AIRCURVE', which, as a whole, is entirely fanciful in Romanian. Even if the relevant public understood the English word 'AIR', and analysed the mark by separating it into two elements, the meaning of 'AIRCURVE' would be 'air whores', which, as a concept, and for respiratory apparatus, is sufficiently nonsensical or puzzling to the extent that it would eclipse any notion of being offensive (para. 13 et seq.). With regard to the word 'Curve' on its own, see the abovementioned example in this paragraph (T-266/13).	04/06/2014, R 203/2014-2
	General consumer	For the goods at issue — *rum* (Class 33) — the relevant public will perceive the sign as provocative, transgressive, rebellious, but not as an indicator of criminal origin of the goods (para. 23).	07/05/2015, R 2822/2014-5

ILLICIT	General consumer	The mark is considered acceptable under Article 7(1)(f) EUTMR, as 'illicit' is different from something like 'counterfeit'. The mark would be seen as fanciful on the goods (*cosmetics, and perfumes*) and it could be accepted.	EUTM 13 469 523
	General consumer	The mark evokes a concept that falls within the domain of vulgarity and profanity. However, the effect is attenuated by the fact that the implicit word does not appear in the mark as such. The presence of the initial figurative element 'W', combined with the euphemistic presentation of 'F___', also suppresses the offensive potential of the sign. Consumers with a normal level of sensitivity and tolerance would not be offended or upset by regular commercial exposure to the term in connection with the relevant goods and services in Classes 16, 18, 25, 35, 41, 43 and 44 (para. 31).	29/11/2018 R 1516/2018-5

hemptouch. PREMIUM CANNABIS ESSENTIALS	General consumer	The sign, containing the terms 'hemptouch' and 'cannabis', is applied for in Classes 3 and 5. It will be perceived by the relevant consumer as a reference to the medicinal use of the substance. Hemp is a variety of *Cannabis sativa*, which contains a very low concentration of THC, and cannabis can be used for medicinal purposes.	EUTM 18 000 042