

METROPOLITAN UNIVERSITY PRAGUE

**LACK OF TRADEMARK DISTINCTIVENESS IN THE CZECH REPUBLIC
AND IN THE EUROPEAN UNION**

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Abstract

This paper compares two slightly different approaches and different decision-making proceeding between the Czech Intellectual Property Office and the European Union Intellectual Property Organization regarding the absolute grounds for refusal, namely the lack of distinctive character. The paper also presents author's personal opinions in given area and an evaluation of the proceedings. The trademark distinctiveness is undoubtedly one of the key elements on which the trademark¹ protection is built on.

The author believes that readers already have the basic knowledge of the trademarks registration procedures and the basic terms related to trademarks, e.g. the definition of a trademark, types and forms of trademarks, applicant, average consumer, basis legislative, the Register etc.

1. Introduction

This paper presents the absolute grounds for trademark refusal, namely the reasons under Article 4 b) of the Act. No. 441/2003 Coll., on Trademarks², respectively Article 7.1 b) European Union Trade Mark Regulation.

There will be also mentioned personal opinions on some specific proceedings regarding the refusal under Article 4 a) of the Act no. 441/2003 Coll., on Trademarks (hereafter ZOZ) or Article 7.1a) European Union Trade Mark Regulation³ (hereinafter ETMR).

The reason is to draw reader's attention to a slightly different approaches in decision-making practice between the Czech Industrial Property Office (hereinafter the Office) and European Union Intellectual Property Office (hereinafter the EUIPO) with special attention on the trademark's distinctiveness.

The Office has the advantage of being smaller as far as number of applications is filed, the number of examiners in the trademark department and the size of the area where trademarks are valid. We can also say that the management is in a very close relation with

¹ The author is aware of the fact that the EUIPO uses the term „trade mark“ whether WIPO uses term „trademark“. Since the paper will be presented at the TENTH WIPO Advanced IP Research Forum, the author will use the term „trademark“.

² Act No. 441/2003 Coll., on Trademarks, force from 1.4.2004

³ Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16 December 2015 amending Council Regulation (EC) No 207/2009 on the Community trade mark and Commission Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark, and repealing Commission Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs)

examiners, so the proceeding is very concentrated as the trademark application goes through multiple level of control.

The director of the trademark department checks the incoming applications before applications are handed to certain examiners. This means that if there are any doubts whether the application lacks distinctiveness or it needs further investigation, it is already suggested by the director.

The examiner then decides whether the assumption was correct and informs the applicant. When the applicant proves acquired distinctiveness, the examiner approves the application and “sends” it to the head of department for his approval to be published in the Register. Before the application is published, there is one more round where all the “to be published” applications are checked by the director and head of department for the mutual consensus and final approval.

From the above mentioned it is obvious that there is at least triple control before the application is approved to be published.

In the EUIPO the situation is slightly different. There are also examiners who “discard” the applications which may, for example, lack distinctiveness. Once the application get through the first selection it is the discretion of an examiner whether to plead for example lack of distinctiveness or not and it is up to his finding and research.

2. The practice of the Czech Intellectual Property Office

Below there are listed the reasons for trademark refusal, according to the ZOZ. These reasons may be based on two different grounds - the absolute⁴ and relative ones. The relative grounds talk about proprietors of earlier trademark applications or registered trademarks and potential collisions⁵. Absolute grounds are listed in Article 4 ZOZ.

If the Office applies any of the following exclusions, the applicant is usually given two months period (which may be extended⁶), to reason his application or to prove acquired distinctiveness (see chapter - *Proving the “enhanced distinctiveness”*).

⁴ Article 4, Act No. 441/2003 Coll., on Trademarks, force from 1.4.2004

⁵ See Article 6 and Article 6/22 Act No. 441/2003 Coll., on Trademarks, force from 1.4.2004

⁶ Act No. 634/2004 Coll., on Administrative Fees

According to Article 4 ZOZ the Office will not register a sign

- a) which do not conform to the requirements of Article 1⁷,
- b) which is devoid of any distinctive character.

Exclusion under Article 4 b) of the Act no. 441/2003 Coll., On Trademarks

The largest number of refused applications is due to Article 4 b) ZOZ. Mostly it is due to the fact that applicants do not often realize what they can apply for, together with claimed list of goods and services, and what they cannot.

Objections according to Article 4 b) ZOZ are possible to overcome. Since the sign "lacks of distinctive character⁸ to the claimed goods and services in connection with the claimed sign" the applicant has the opportunity to acquire distinctiveness.

Distinctiveness of a trademark within the meaning of Article 4 b) ZOZ means that *the sign identifies the product and/or services in respect of which registration is applied for as originating from a particular undertaking⁹, and thus to distinguish that product from those of other undertakings.*

The registration must be refused for trademarks that are per se devoid of any distinctive character, for descriptive marks, and for marks that consist exclusively of indications that have become customary in the current language or in the bona fide and established practices of the trade.

3. The practice of the European Union Intellectual Property Organization

Following Articles of the European Union Trade Mark Regulations are relevant for this paper regarding the absolute grounds for trademark application refusal. As shown, there are many similarities between the ZOZ and EUTMR. However, the author of the paper sees no difference in legislation but in the registration proceeding itself.

⁷ A trademark may be any sign 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.

⁸ Distinctiveness of a trade mark means that the sign serves to identify the product and/or services in respect of which registration is applied for as originating from a particular undertaking, and thus to distinguish that product from those of other undertakings.

⁹ Business enterprise, state commercial bodies and trade associations.

Absolute grounds for refusal according to Article 7.1 b) of the EUTMR and Article 4 ZOZ are almost identical. One of the differences is the fact that the EUIPO must examine the trademark application in all EU languages.

Thus, if the applicant submits an application, e.g. “PES”¹⁰ for services such as *dog trainings*¹¹, the examiner must run a search on the word element and its connection with the claimed list of goods and services. However, if the examiner is not of Slavic origin or the research is not as thorough as needed, there is a small probability that the lack of distinctive character will be found.

Below there are listed relevant exclusions from registration of the sign according to the EUTMR.

The following shall not be registered:

- (a) signs which do not conform to the requirements of Article 4¹²;
- (b) trademarks which are devoid of any distinctive character;

Although it is commonly accepted that a minimum degree of distinctiveness suffices, it must also be taken into account that in order to be distinctive as a European Union trademark, the sign must be distinctive with regard to the European Union as a whole.

It is interesting to note the difference between the previous CTMR¹³ and new EUTMR. In the CTMR was said that 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.*”

Unfortunately the discussion of above mentioned change is not part of this paper, but it is definitely worth mentioning. Since according to the new EUTMR the sign does not have to be „**capable of being represented graphically** „but it only “**may consist of any signs,**” it opens doors to many applicants who would like to register the olfactory, the sound, etc. The author does not personally agree with the new approach as the conditions of registering are

¹⁰ “Dog” in English

¹¹ According to the Nice Classification which assigns goods to Classes 1 to 34, and services to Classes 35 to 45

¹² An EU trade mark “**may consist of any signs**, in particular words, including personal names, or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings.”

¹³ Community Trade mark Regulations

not set and clear. And how are the National offices going to keep the olfactory samples? Who is going to compare the music rhythms?

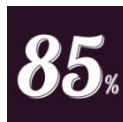
4. The practice of the Czech Intellectual Property Office and the European Union Intellectual Property Organization pursuant to Article 4 a) of the Act no. 441/2003 Coll., on Trademarks, respectively of Article 7.1a) European Union Trademark Regulations

The author believes it is also appropriate to mention refusals under Article 4 a) ZOZ, respectively, Article 7.1 a) EUTMR as there is sometimes a very narrow line between refusal under Article 4 a) ZOZ, respectively, Article 7.1 a) EUTMR and under Article 4 b) ZOZ, respectively, Article 7.1 b) EUTMR.

According to the author, the sign which “deserves” refusal under Article 4 a) ZOZ is the sign "Christian Church" - the sign of this type cannot be awarded/ given to any undertaking on the market, to any business entity or to any organization. The possibility that a single business entity owns such a sign brings too many negative consequences. Such an entity or undertaking could ask all Christian organizations, churches, groups, schools etc. to pay fees for using his registered trademark. As mentioned above, this exclusion cannot be overcome.

The most recent national applications refused under Article 4 a) ZOZ are no. 513321 "Czech Orthodox Church" and no. 513322 "Orthodox Church"¹⁴. It is quite evident that these two signs cannot be registered because, as noted above, the Office cannot simply grant such a sign only one person or business unit/undertaking. The consequences would be immeasurable. Just to picture the situation when the potential proprietor would claim the costs on every single user of his trademark – churches, schools, academies etc.

In the author’s opinion the same case should have been with a combined EUTM no. 013708235 in the following figure:



The sign as it is, although in colour and with certain resolution, but without any other distinctive character, should be refused under Article 7.1 a) EUTMR. Whoever owns such a

¹⁴ <http://upv.cz/en/client-services/online-databases/trade-mark-databases/national-database.html>

sign could think that he is entitled to require fee from the other participants in the market and competitors. If this trademark is applied for, let's say the goods in class 1- *chemistry and chemical products*, it could be argued that each of the compounds, each product, needs a certain amount of ingredients in the solutions – and it can be 85 %. Thus the percentage is necessary for the sector. Subsequently, the inscription on the box of the product could be in collision with potential trademark proprietor. A similar principle can be applied on services in class 35, for example, *sales of the products mentioned in Class 1 - with the 85% discount*.

5. The practice of the Czech Intellectual Property Office and the European Union Intellectual Property Organization to Article 4 b) of the Act no. 441/2003 Coll., on Trademarks, respectively of Article 7.1b) European Union Trade mark Regulations

The question is whether some of the refusals under Article 4 b) ZOZ were not supposed to be refused under Article 4 a) ZOZ - as mentioned in the previous chapter.

For example, the word signs such as "Farmer's Markets" and "Playgrounds for Children" – these two signs, should be, according author's opinion, immediately refused under Article 4 a) ZOZ, since the conditions from 4 a) ZOZ can be also applied.

Given the list of goods and services claimed by the national trademark application "Playgrounds for Children" no. 512006¹⁵, in class 41 - *teaching and training, organizing courses for children and organizing festivals*, such a sign, according to author's opinion, should not even get the chance to be registered. Such signs are widely used by other subjects on the market, especially schools and other educational and free time institutions.

The same logic should apply in the case of "Farmers Market" no. 518746¹⁶ where claimed list of goods and services includes *organizing farmer's markets, selling fruit and vegetables, organizing entertaining services*.

A very detailed report has been published by the EUIPO regarding the relative reasons for trademark refusal called "Common Communication on the Common Practice of Relative Grounds of Refusal – Likelihood of Confusion (impact of non-distinctive/weak components)". The common communication provides thorough description of signs (word, combined,

¹⁵ This trademark applications was refused under Article 4 b) Act no. 441/2003 Coll., on Trademarks

¹⁶ This trademark was registered after proving the enhanced distinctiveness

figurative) which shall not be registered altogether with the claimed list of goods and services”¹⁷.

5.1 Word marks

Word marks gain the broadest, widest protection from registration. The proprietor of the signs can use it in any shape, form and colour. But it also means that the word mark is the most difficult to register as they are often rejected on grounds of lack of distinctiveness.

Below there are listed word trademark applications which were refused because they lacked any distinctive character.

The national word mark no. 524918 "LIVECHAT.CZ", for services such as *chat services and communication over the Internet*, in this case there is a refusal under § 4 b) ZOZ perfectly legitimate and desirable. Although the sign applied for in the English language, the average Czech consumer is able to translate it. The Office translates the signs applied for from English, French and German. The reason is that the average Czech consumer usually speaks one (or more) foreign languages and French, German and English are the ones most spoken in the Czech Republic.

Another example is the rejection is the national word mark no. 519954 "Prague Chocolate" for goods in Class 30, amongst others, *chocolate*.

A beautiful example of the refused application for a EUTM is no. 13910591 "LIVEMAP" for goods and services in classes 9, 35 and 42. Here the EUIPO also objected that the goods and services and purely descriptive regarding the applied sign.

The question remains whether the EUTM "SPICE UP YOUR LIFE" registered for goods in class 33 - *namely alcoholic beverages*, is really original enough to be registered without any objections. In this case the author believes that the sign is also descriptive.

Another controversial case would be the slogan no. 003201373 "Your spare chance could change your life", for services in class 41 - *namely lottery services*. The true meaning is "if you don't bet, you may lose the opportunity to win some money", which, according to the author, is challenging the potential gamer to participate in a game and may be considered as descriptive.

On the other hand, in the Office database can be also found some examples of a contradictory signs. For example trademark no. 522376 "Royal party service" for goods and

¹⁷ Also known as CP3 – Common Communication on the Common Practice of Relative Grounds of Refusal

services in classes 32, 35, 39, 41, 43 - *including the restaurants, catering, and drinks*. Another similar case may be trademark no. 470419 "imitation of concrete" for goods and services in classes 19, 35, 37, 42 - *construction, mining, surface mining*.

The EUIPO database includes for example EUTM no. 013625331 "HealthDrive", which is registered for goods and services in classes 9, 35, 38, 39, 42 - *for products and services dealing with software, repair software and hardware installations, saving files, etc*. The registered trademark clearly suggests the health of computers, computer files, and yet the application was published without any exclusion, and subsequently registered.

5.2 Combined marks

If the applicant files an application in combined form - the combination of both -the word element and the picture, logo, design - in either black and white form or in colour - the whole sign is, in most cases, very distinctive and unique. However, there are still cases where the combined sign lacks distinctiveness.

In the national database of refused combined marks can be found, for example, no. 521500 in the following figure, for services in class 44:



The translation is "PERSONAL DOCTOR" and the application was found descriptive as the visual element altogether with word element suggests that there will be provided medical services. The whole sign is purely evocative for required services.

Another fine example of refused application of a combined sign is no. 512708 "LABELS" for goods and services in classes 16, 24, 35 and 40 – *including the labels and printing services*. Even in this case the Office found the lack of distinctiveness in connection with the sign (word and visual elements altogether) and the required list of goods and services. The average consumer is aware of the fact what the picture is, where it is used and, as a bonus, what is written in it. Although the sign is in green colour, it is possible that other business entities may use it.



The EUIPO database includes refused combined signs such as no. 13615844 “OBST” (fruit) for goods in class 30 and no. 13714183 (Eat for fun) for goods in classes 8, 21.



On the other hand, it is also possible to find in the EUIPO database contradictory registered mark, for example no. 013730429 “MICRO COTTON” for goods in classes 20, 24 and 28 such as *household linen, household textile articles; textiles*. In this case, it is questionable whether the trademark should have been registered. In the author’s opinion the sign is not distinctive; on the contrary, it is quite descriptive in relation to all the claimed goods. And even graphic element, which is part of the mark, does not provide indications on distinctivity.



5.3 Figurative marks

We can say there is compliance in decision - making proceeding among the figurative marks between the Office and the EUIPO. The figurative marks do not contain any word element which could be taken as advantage in some cases.

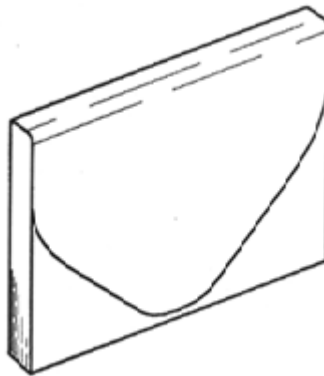
If the figurative elements are purely descriptive in relation with required goods and services, the sign shall be refused. But if, let’s say hypothetically, there is a descriptive figurative element and also the word element - the company name, brand name, logo- there is higher possibility that the sign will be actually registered.

The first example is the national figurative mark no. 516165 - 7 stars lined up next to each other. In this case it was argued that the design/illustration of lined up stars is frequently used for labelling of high-quality products and the sign contains laudatory subtext. The Office also said that if we place the sign on any product, the average consumer may believe the product is above the average quality. If we take into account, for example, the well-known Greek brandy Metaxa and or cognac Napoleon, average consumer does not only see the name, but

also the number of stars on the bottle – 3, 5 or 7- depending on periods on ageing. The more stars, the better quality.



Another example of refused national trademark application is the box for chewing gum, no. 434908 for goods in class 30 - *chewing gum*. Packaging itself is commonly used in the confectionery area and the fact that it is only a figurative mark without any other element, e.g. verbal, or colour, greatly complicated the process of registration. If there had been any other word or figurative element, let's say the applicants name or earlier trademark which is Wrigley's, it would have been possible to register the trademark.



From the EUIPO database were selected following examples of refused trademark applications. The first one is no. 014328918 where there is a with the lamb's head in the black circle for goods and services in classes 29, 40 and 44, focusing on *lamb meat processing and slaughtering sheep*. Again, as in previous cases mentioned above, it was said that the combination of goods and services and the figurative element is descriptive and application was refused under Article 7.1 b) EUTMR.



The last example is an application no. 014257984 in shape of a hamburger where the applicant is McDonald's and claimed goods and services are in classes 29, 30, 43- all of them in connection *with food*. Here it is again obvious that the practice of EUIPO and the Office is identical (or would have been if the application was filed in the Czech Republic). The sign does not consist of any original image elements; it's just a hamburger representation. If the applicant had placed the company's logo on the hamburger, the descriptiveness would be overcome.



6. Proving the “distinctiveness”

In accordance with Article 7.3 EUTMR, a trademark may still be registered despite the fact that it does not comply with Article 7.b) EUTMR, provided that it “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”.

Distinctive character acquired **through use** means that although the sign lacks distinctiveness with regard to the goods and services claimed, owing to the use made of it on the market, the relevant public has come to see it as identifying the goods and services claimed in the EUTM application as originating from a particular undertaking.

Meaning that the sign has become capable of distinguishing goods and services from other undertakings because they are perceived as originating from a particular undertaking. In other words – consumer can tell where the goods and services come from. In this way, a sign originally unable to be registered under Article 7.1 b) EUTMR can acquire a new significance, and it is no longer purely descriptive or non-distinctive, permits it to overcome those absolute grounds for refusal of registration as a trademark.

Enhancing distinctiveness through use of a mark requires that at least a significant part of the relevant public recognizes that the goods and services are connected with particular business subject. It means that the applicant must prove the reputation and provide all sorts of evidence to demonstrate it.

The most important means of evidence are invoices, awards, press articles, company profiles, sales turnovers, market shares, advertising, etc.

It is also important which goods and services the applicant is enhancing distinctiveness for. Is it for cars? Chocolate? Hamburgers or space shuttles? It all has to correspond with the size of the market, number of consumers and the type of product (service). Selling one thousand chocolate bars is completely different from selling one space shuttle or one hundred really expensive and unique cars.

It is important to note that proving distinctiveness in the Czech Republic and within the EU territory are two completely different situations. To prove distinctiveness in EU, it is necessary to establish the distinctive character for the relevant range of goods and services on the **relevant territory**, as stated in the judgment *Sunrider v. OHIM*, paragraph 76, where the Court stated *that the territorial scope of the use is one of several factors that must be taken into account in determining whether such use is genuine or not.*

EUTM must be refused if an absolute ground exists only in part of the European Union. As a logical consequence, acquired distinctiveness must be established throughout the territory, in which the trademark did not, have such character. This is because the unitary character of the European Union trademark requires a sign to possess distinctive character, inherent or acquired through use, throughout the European Union.

As an excellent example of the enhanced distinctiveness is the word mark "BRAZIL 2014", which is claimed for 25 classes of goods and services and is owned by FIFA. An interesting feature of the mark is the fact that the normal procedure was immediately invoking refusal under Article 4 b) ZOZ, or Article 7.1 b) EUTMR. However, the World Cup takes place every four years and it is an honour to be the host country. There are many candidates and the last round of elections takes place at the headquarters of FIFA in front of hundreds of journalists, cameras and millions of fans watching from all around the world. Once the name of the host country is pulled from the pool, the sign gains distinctiveness.

Acquired distinctiveness

A trademark may be registered despite the fact that it is not distinctive. The applicant must prove that the sign „*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*“. Distinctive character acquired through use means that the relevant public has come to see the

trademark identifies the goods and services claimed as originating from a particular undertaking¹⁸.

The sign must be capable of distinguishing goods and services from those of other undertakings and it must be obvious that public perceives the sign as originating from a particular undertaking, so the sign will not be longer purely descriptive or non-distinctive.

Distinctive character of a sign must be assessed in relation to the average consumer for the category of required goods or services. These consumers are reasonably well informed, observant and circumspect. The definition of the relevant public is linked to an examination of the intended purchasers of the goods or services concerned, since it is in relation to those purchasers that the mark must perform its essential function. The relevant consumer includes, therefore, not only persons who have actually purchased the goods and services but also any **potentially interested** person in the strict sense of prospective purchasers.

The applicant must submit evidence that enables the Office to find that at least a significant proportion of the relevant section of the public identifies the products or services concerned as originating from a particular undertaking because of the trademark.

The most appreciated and welcomed evidence is invoices, press articles, company profiles, commercial and a proof of market share. These types of evidence can actually prove that applicant produces or sells the required goods or provides the services.

The struggle is usually class 35, *commercial and advertising*. Most of the applicants require this class as they believe they actually “do” this. They rarely realize that having commercial placed in local newspaper does not prove the applicant actually provides *commercial and advertising*. The applicant usually pays the advertising company or the newspaper and they are the ones who provide these services.

The Office does not mostly accept affidavits as the main evidence, but as a support one, as it does not clearly connect the applicant with required list of goods and services.

Once such evidence is provided in decent number and for sufficient time being, the application is published in the Register.

The main means of evidence are opinion polls, market surveys, certifications, press articles, statements from the third parties, company profiles, annual reports, sales turnover, market shares, invoices delivery notes, advertising. As a support evidence there is possible to name:

¹⁸ Judgments of 04/05/1999, C-108/97 & C-109/97, Chiemsee, EU:C:1999:230, § 52

affirmed statements, as mentioned above, website printouts, registered domain names, business registrations, business cards, no name photos etc.

The European Union Intellectual Property Office

So far the proceeding and legislative is similar within the Office and EUIPO. Of course it is very important to distinguish the types of goods and services claimed. Whether it is chocolate, nails, cars or nuclear reactors. Then selling one piece of chocolate is not as much as selling the nuclear reactor, as there are not as many competitors and also financial wise.

The difference is that European Union trademark has a unitary character and has equal effect throughout the European Union, so the trademark application must be refused registration if an absolute ground exists only in part of the European Union¹⁹.

There is also the difference in when can be the distinctiveness proved, respectively when are the documents filed, dated. The Office accepts all evidence till the trademark is published in the Register.

The evidence, as said in EUTMR, must prove that distinctiveness through use was acquired prior to the EUTM application's filing date.

Where the EUTM applied for is rejected with respect to its meaning in specific language, acquired distinctiveness through use must be shown with respect to the Member States in which that language is an official language. Particular care should be taken when a language is an official language in more than one EU Member State. In such cases, when dealing with an absolute grounds objection based on the meaning of wording in a certain language, acquired distinctiveness through use must be proven for each of the Member States where that language is official.

¹⁹ Judgment of 17/05/2011, T-7/10, 'υγεία', EU:T:2011:221, § 40

7. Conclusion

These papers presents few of many examples of refused trademark applications due to Article 4 b) ZOZ and Article 7.1 b) EUTMR but there are also presented trademarks which were registered after the acquired distinctiveness was proved.

The paper also present author's personal opinion regarding the proceedings in both offices - Intellectual Property Office and the European Union Intellectual Property Organization. It would be very interesting to follow up on the new the EUIPO practice regarding the registration of *"marks which may **consist of any signs**, in particular words, including personal names, or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings"*. If an applicant, for example, files an olfactory trademark application – banana scent - for goods in class 31 – *fresh bananas*, would it be possible to refuse this application under Article 4 b) ZOZ and Article 7.1b) EUTMR as purely descriptive? And would it be possible to register such a sign for chips, computers or grocery products?

It is also interesting to note that according to many studies and opinion's of more experienced colleagues presented at recent conferences, the quality of trademark applications decreases, meaning that applicants apply for every single letter, name, shape, colour etc. It is evident that applicants do not understand and follow the basics of trademark registration, application or its purpose.

According to author's opinion the quality of recent applications is not as unique and original as it was few years ago. It is of caused by converging markets and the need of having the trademark registered not only nationally, but also internationally.

If an applicant files a EUTM application without running a proper search, the EUIPO may find that the applied sign is descriptive in one of the EU languages and refuses the application. That is one of many reasons why some EU trademark applications and national applications have been refused.

If we focus on proving distinctive character of a trademark, it may also be very interesting to compare the number and types of documents provided by applicant to the Office and to the EUIPO.

From one point of view the proceeding in front of the Office seems easier, faster and smoother than proceeding in front of EUIPO. The problem, or difference, is, as mentioned above, that EUIPO offers online Fast Track filing, which improves and speeds up the whole

proceeding. The online filing might be a significant help in speeding up the proceeding and to simplify the communication.

From everything above mentioned and said it is obvious that the proceedings in the Czech Intellectual Property Office and in the European Union Intellectual Property Organization are conducted similarly and sooner or later the proceeding will be unified.

Sources

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