

Preparation for seventeenth session of SCT

Contribution from OHIM

I. New types of marks

A. Methods of representation and description of new types of marks

All Community trade marks (CTMs) must be capable of being represented graphically.

For 3-D marks, the representation must consist of a photographic reproduction or a graphic representation. Up to six different perspectives may be provided.

Where registration in colour is applied for the representation must consist of the colour reproduction of the mark. The colours making up the mark must be indicated in words. A reference to a recognised colour code may be added and this is recommended.

For sound marks the representation must consist of a graphical representation, in particular musical notation. Where the application is filed electronically it may be accompanied by an electronic file containing the sound.

There are no specific rules for other types of new mark. Movement marks have been accepted. However, case law has repeatedly found that smell marks cannot be represented graphically.

Applicants are free to describe the marks as they choose provided the description is in conformity with the representation.

B. Established trade mark principles and new types of marks

As far as distinctiveness is concerned the jurisprudence relating to CTMs makes no distinction between traditional and new types of marks.

CTMs may not be accepted where they consist exclusively of either:
the shape which results from the nature of the goods themselves, or
the shape of goods which is necessary to obtain a technical result, or
the shape which gives substantial value to the goods.