

Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (Recast) (Text with EEA relevance)

CHAPTER 2

**SUBSTANTIVE LAW ON TRADE MARKS**

*SECTION 2*

***Grounds for refusal or invalidity***

*Article 4*

**Absolute grounds for refusal or invalidity**

1 The following shall not be registered or, if registered, shall be liable to be declared invalid:

- a signs which cannot constitute a trade mark;
- 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 services;
- 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, or another characteristic, which results from the nature of the goods themselves;
  - (ii) the shape, or another characteristic, of goods which is necessary to obtain a technical result;
  - (iii) the shape, or another characteristic, 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 authorised by the competent authorities and are to be refused or invalidated pursuant to Article 6ter of the Paris Convention;
- i trade marks which are excluded from registration pursuant to Union legislation or the national law of the Member State concerned, or to international agreements to which the Union or the Member State concerned is party, providing for protection of designations of origin and geographical indications;

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- j trade marks which are excluded from registration pursuant to Union legislation or international agreements to which the Union is party, providing for protection of traditional terms for wine;
  - k trade marks which are excluded from registration pursuant to Union legislation or international agreements to which the Union is party, providing for protection of traditional specialities guaranteed;
  - l trade marks which consist of, or reproduce in their essential elements, an earlier plant variety denomination registered in accordance with Union legislation or the national law of the Member State concerned, or international agreements to which the Union or the Member State concerned is party, providing protection for plant variety rights, and which are in respect of plant varieties of the same or closely related species.
- 2 A trade mark shall be liable to be declared invalid where the application for registration of the trade mark was made in bad faith by the applicant. Any Member State may also provide that such a trade mark is not to be registered.
- 3 Any Member State may provide that a trade mark is not to be registered or, if registered, is liable to be declared invalid where and to the extent that:
- a the use of that trade mark may be prohibited pursuant to provisions of law other than trade mark law of the Member State concerned or of the Union;
  - b the trade mark includes a sign of high symbolic value, in particular a religious symbol;
  - c the trade mark includes badges, emblems and escutcheons other than those covered by Article 6ter of the Paris Convention and which are of public interest, unless the consent of the competent authority to their registration has been given in conformity with the law of the Member State.
- 4 A trade mark shall not be refused registration in accordance with paragraph 1(b), (c) or (d) if, before the date of application for registration, following the use which has been made of it, it has acquired a distinctive character. A trade mark shall not be declared invalid for the same reasons if, before the date of application for a declaration of invalidity, following the use which has been made of it, it has acquired a distinctive character.
- 5 Any Member State may provide that paragraph 4 is also to apply where the distinctive character was acquired after the date of application for registration but before the date of registration.