

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 8

Lack of distinctive character or of reputation of an earlier trade mark precluding a declaration of invalidity of a registered trade mark

An application for a declaration of invalidity on the basis of an earlier trade mark shall not succeed at the date of application for invalidation if it would not have been successful at the filing date or the priority date of the later trade mark for any of the following reasons:

- (a) the earlier trade mark, liable to be declared invalid pursuant to Article 4(1)(b), (c) or (d), had not yet acquired a distinctive character as referred to in Article 4(4);
- (b) the application for a declaration of invalidity is based on Article 5(1)(b) and the earlier trade mark had not yet become sufficiently distinctive to support a finding of likelihood of confusion within the meaning of Article 5(1)(b);
- (c) the application for a declaration of invalidity is based on Article 5(3)(a) and the earlier trade mark had not yet acquired a reputation within the meaning of Article 5(3)(a).