

Distinctive Character of Slogans: Between Advertising Messages and Indicators of Commercial Origin of Goods and Services

The European Union Intellectual Property Office („EUIPO“) represents the central institution responsible for the administration of trade marks, industrial designs and geographical indications within the European Union. As such, EUIPO plays a key role in the harmonization of practice in the field of intellectual property through the development of so-called Common Practices (“CP”). Although these guidelines do not have binding legal force, their significance extends beyond proceedings conducted before EUIPO, as they serve as a basis for establishing standards for not only a Member State’s intellectual property offices, but also more broadly.

Intellectual property law in the Republic of Serbia follows the standards set out in conventions to which the Republic of Serbia is a signatory, as well as the *acquis* of the European Union, although it is not formally a Member State. This results in a high level of harmonization of intellectual property law with the latest trends and practices. Accordingly, certain Common Practices have already been implemented through the **Methodology of the Intellectual Property Office of the Republic of Serbia in trade mark registration proceedings and proceedings concerning registered trademarks (“Methodology”)**, such as the *Scope of Protection of Black and White (“B&W”) Marks* (CP4), *Use of a Trade Mark in a Form Differing from the one Registered* (CP8), and the *Distinctiveness of three-dimensional marks (shape marks) containing verbal and/or figurative elements when the shape is not distinctive in itself* (CP9).

At the end of 2025, within the European Union Intellectual Property Network (EUIPN), the **Common Practice on the Distinctive Character of Slogans (CP17)** was adopted, with full implementation at EU level envisaged for the first quarter of 2026. These guidelines further harmonize the approach to the registration of slogans as trademarks.

Common Practice Guidelines for the Assessment of the Distinctive Character of Slogans under CP17

The Common Practice guidelines for assessing the distinctive character of slogans aim to ensure that different intellectual property offices within the EU system approach this issue in a consistent and predictable manner. In developing this Common Practice, case law, in particular that of the Court of Justice, was taken into account.

The result of these efforts are guidelines which define the **concept of a slogan** and provide a **non-exhaustive list of criteria** to be applied in the assessment of the distinctive character of a verbal sign in the form of a slogan, as well as examples illustrating the applicable criteria and different outcomes.

All trademarks, regardless of their type, must be assessed on the basis of the same legal principles applicable to the assessment of distinctive character. The **distinctive character** of a trademark is assessed, first, in relation to the **goods or services for which registration is sought** and, second, in relation to the **perception of the relevant public**, consisting of consumers of those goods or services.

The assessment of whether a slogan is distinctive is neither automatic nor uniform. The specific guidelines of this Common Practice must be applied on a case-by-case basis, within the framework of established legal principles governing the assessment of distinctive character, and only on the basis of such an assessment, a decision on the registrability of a slogan as a trademark be made.

Given that a trademark is a sign capable of distinguishing the goods or services of one natural or legal person from another one natural or legal person, which constitutes its **essential function**, signs devoid of any distinctive character cannot be registered and, if registered, may be declared invalid. The definition of a slogan is not a legislative category, but its interpretation within EU trademark law has been shaped through the case law of the Court of Justice and the General Court. In essence, slogans are understood as **short, easily memorable phrases used primarily to promote an idea or product**.

Although slogans may have multiple functions, they often serve to promote the relevant goods or services. In this regard, the Court of Justice has established that **slogans** may function both as **advertising messages and as indicators of the commercial origin of goods and services**.

According to the Common Practice guidelines, for a slogan to be eligible for registration it must possess a certain degree of originality or resonance, requiring at least some interpretation by the relevant public or triggering a cognitive process in the minds of that public. However, even if a slogan cannot trigger a cognitive process, this does not necessarily mean that it lacks distinctive character.

The Common Practice guidelines systematize the criteria developed in the case law of the Court of Justice and the General Court, in the form of a non-exhaustive list for assessment of distinctive character of the slogans:

- A slogan with **multiple meanings** may engage the relevant public by allowing different interpretations. This may create a deeper and more meaningful connection with the goods and services, as the relevant public finds a personal connection with the slogan, making it easier to remember.
- The use of **wordplay** or **puns** may render a slogan more memorable, as it requires a certain intellectual or mental effort to understand its meaning and content, thereby strengthening its distinctive character.
- Signs containing elements of **conceptual intrigue or surprise** may be perceived as imaginative, surprising or unexpected, which may attract attention, arouse curiosity and make the slogan more interesting, prompting the relevant public to reflect on its meaning.

- A slogan that demonstrates a certain degree of **originality or resonance** is more likely to attract the attention of the relevant public. A slogan that requires thought or interpretation may be more engaging, as it involves the public in a mental process, making it more memorable.
- A sign that encourages the relevant public to engage in a **cognitive process**, requiring a certain degree of **interpretative effort** and prompting the relevant public to reinterpret the slogan in a new context, will generally possess a high degree of distinctiveness.
- The use of **unusual grammatical forms, syntactic structures and/or linguistic and stylistic devices** such as alliteration, metaphors, rhyme or paradox must be carefully assessed, as slogans are often formulated in a simplified manner in order to be more concise and impactful. The use of distinctive sentence structures, alliteration, metaphors, rhyme or paradox may make a slogan more appealing and memorable. These elements may add a poetic or rhythmic quality to the slogan and contribute to its distinctive character.

When assessing the distinctive character of a slogan, all the **circumstances of the case** must be considered, as well as the **overall impression** conveyed by the sign to the relevant public. The fact that one or more of the above criteria are met does not automatically result in a finding of distinctiveness. Therefore, assessment of all relevant factors must be carried out in each individual case in order to determine whether the slogan is capable of functioning as an **indicator of commercial origin**, even if it **simultaneously** conveys a **promotional message**.

Slogans perceived by the relevant public as **mere promotional messages** highlighting positive characteristics of goods or services in a simple, direct and unambiguous manner, and which do not enable the public to recognize them as distinctive signs of origin of goods and services, **lack distinctive character** and are not eligible for trademark protection.

Registration of Slogans in the Republic of Serbia

As a short and concise expression conveying a complete idea, a slogan most often has an **advertising function**.

In the Republic of Serbia, the protection of slogans as trademarks is possible under the general conditions requiring:

- that the slogan be capable of distinguishing in the channel of commerce goods and/or services of one natural or legal person from the goods and/or services of another natural or legal person; and
- that it may be represented on the Register of Trademarks in a manner that enables the competent authorities and the public to determine the clear and precise subject matter of the protection.

Therefore, it has also been established through the practice of the national IPO that slogans (taglines) may be the subject of trademark protection, with the difference that there are no standardized

guidelines in the examination of this type of trademarks, as is the case with the establishment of CP17 at the EU level.

In Serbia, slogans will generally be registrable if their **laudatory meaning** indirectly indicates certain characteristics or qualities of the goods or services, i.e. if they possess a metaphorical dimension. On the other hand, simple slogans that directly describe characteristics or qualities of the goods or services will not be considered distinctive and eligible for trademark protection.

It follows that the IPO has already adopted, through its Methodology, the same principles that EUIPO has now systematized through CP17.

Examples from Practice

EUIPO, in its Common Practice guidelines, has provided several illustrative examples of distinctive slogans, created primarily for the purposes of those guidelines, such as “*Colder than your ex’s heart*” for beer in Class 32 of the Nice Classification.

According to the guidelines, the relevant public would perceive this sign as a humorous expression referring to emotional coldness associated with a former partner. The expression plays on the stereotype of an ex-partner being emotionally cold or heartless.

As the sign does not convey information about the goods themselves, it requires contextual interpretation and triggers a **cognitive process**, thereby supporting its distinctiveness as an indicator of commercial origin.

Having in mind that the criteria for investing a certain intellectual effort and triggering a cognitive process are fulfilled, such a sign would have distinctive character, as the relevant public would perceive it as an indication of the commercial origin of goods, and not merely as an advertising message.

When it comes to a non-distinctive slogans for which trade mark protection has been refused, the guidelines provide examples from practice which mainly represent **motivational statements** encouraging responsible behavior in relation to the applied goods and services. Such are, for example, the slogans “**Save with us**” applied for services of debt advisory in Class 36 of the Nice Classification, or “**Don’t risk your home safety**” applied for insurance services in the same class.

Such slogans are **simple, lacking originality**, unusual structure or hidden meaning, which makes these messages **direct and unambiguously promotional, rather than serving the function of indicating the commercial origin** of the goods and services in question.

When it comes to the practice of the national Office, as a consequence of the absence of clear guidelines, the practice of slogan registration is not entirely consistent.

Slogans considered distinctive and registered include “**DOBAR OSEĆAJ KOJI SE VIDI**” for goods in Class 30 of the Nice Classification, “**Svetsko a naše!**” for beers in Class 32 of the Nice Classification, “**VODA U SAVRŠENOJ FORMI**” for goods and services in various classes directly related to ceramics and sanitary ware, as well as “**HOĆE NEKO NA VATERPOLO**” for goods and services across multiple classes that do not share a common denominator, unlike the previous case.

Conversely, the applied-for slogans “**Sve što ti treba**” and “**UKUS KOJI MAMI!**” for food products in Class 30 of the Nice Classification, as well as “**NIJE SVEJEDNO**” for goods and services in multiple classes of the Nice Classification, were considered **non-distinctive**.

From these examples, it may be concluded that the IPO will generally refuse slogans that constitute clear and direct promotional messages as non-distinctive. However, in borderline cases, a certain degree of flexibility in the assessment of distinctiveness can be observed, which may lead to inconsistencies in practice, particularly in relation to slogans that balance between an advertising message and an indication of commercial origin, such as “*VODA U SAVRŠENOJ FORMI*”, while certain slogans that do not directly or indirectly convey information about the goods, and require a certain degree of imagination, including the triggering of a cognitive process, have nevertheless been refused, such as the slogan “*Sve što ti treba*”.

Rather than a Conclusion

The introduction of the Common Practice CP17 by EUIPO represents a significant step towards harmonizing the criteria for examination of the distinctive character of slogans, emphasizing the need for a comprehensive and contextual analysis of each individual case. Although these criteria do not introduce new rules, their systematization contributes to greater legal certainty and predictability in trademark registration proceedings.

An analysis of the practice of the Intellectual Property Office of the Republic of Serbia shows that, although there is a relatively consistent practice in relation to the registration of slogans, its application is not always fully consistent, particularly in borderline cases where slogans balance between a promotional message and an indication of commercial origin. In this sense, it may be concluded that the IPO already applies the principles that are now systematized through CP17, but that the absence of clearly defined guidelines, such as those developed at EU level, may lead to certain deviations in individual cases. Such situations point to the importance of further clarifying the criteria in order to enhance consistency in the application of the standards for assessing the distinctive character of slogans.

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