

The Non-traditional Trademarks Archive

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Introduction

The [Non-Traditional Trademarks Archive](#) was founded in 2003 after the European Court of Justice (ECJ) has issued the [Landmark Judgment of 12 December 2002 in Case C-273/00](#), (Ralf Sieckmann vs Deutsches Patent- und Markenamt) followed by the [Opinion of ADVOCATE GENERAL RUIZ-JARABO COLOMER dated November 6, 2001](#) in Case C-273/00 Ralf Sieckmann (Reference for a preliminary ruling from the Bundespatentgericht (Germany)) on graphic representability of national Trademarks and CTM. This archive has the function to inform and help IP professionals and students in the field of law and economics writing their thesis on this subject matter. It includes comments, books and caselaw on the said decision and an annual compilation of the said Non-Traditional Trademarks published at the beginning of every year.

The Graphical Representation Approach in the European Community and in related countries

A trademark is a distinctive sign or indicator which is used by an enterprise or an individual to identify uniquely the origin of its products and / or services to consumers and to distinguish its products or services from those of other entities. Typically, it is a word, name, phrase, logo, design, image or a combination of these elements registered either in black and white or in specific colours. These types of conventional trademarks cover about 99 % of the trademark registrations all over the world.

There is also a range of Non-Traditional Trademarks which may be either visible signs, e.g. shapes, moving images, holograms, colours, positions or non-visible signs, e.g. textures, sounds, scents and aromas which are available for registration in some parts of the world subject to the requirements laid. (Arden, 2000, Sandri, 2003, Lunell, 2007).

In the European Community "any signs capable of being represented graphically" can be registered provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings (Sandri 2003, Sieckmann, 2001, 2002).

The European Court of Justice (ECJ) has established clear precedents, and not merely guidance, as to what conditions a representation of a mark must fulfil. A trade mark may consist of a sign which is not in itself capable of being perceived visually, provided that it can be represented graphically, particularly by means of images, lines or characters and that its representation is clear, precise, self contained, easily accessible, intelligible, durable and objective (ECJ, Judgment of 12 December 2002 in Case C-273/00, 'Sieckmann', paragraph 55).

According to the case-law of the European Court of Justice, the requirements concerning a graphic representation of the mark serve a dual purpose, namely on the one hand to define the precise subject-matter of protection granted to the trade mark proprietor (and the Board adds that this ought not be confused with the scope of protection) and on the other hand that entry of the mark in the public Register makes it accessible to the competent authorities and the public, particularly to third parties who must be able to ascertain what is protected by their competitors (ECJ, Judgment of 12 December 2002 in Case C-273/00, 'Sieckmann', paragraphs 47 – 51).

This above approach is also followed by the trademark registries at Hong Kong, Norway, Singapore, South Africa and Switzerland.

Other approaches used all over the world

The United States approach is somewhat different as it requires a description for any type of trademark or servicemark that is not filed as a pure word mark.

Australia and New Zealand apply a mixed approach as they require both a graphical representation and a description.

But in many jurisdictions in Asia, the Middle East, Africa, and South America, by today, (non visual) Non-Traditional Trademarks could not be registered at all, and applicants and their representatives may pay registration or extension fees for international registration to these countries in vain.

New location of Non-Traditional Trademarks Archive

Since 2007 the Non-Traditional Trademarks Archive, i.e. a compilation of color trademarks, motions picture marks, hologram marks, sound marks, scent and aroma marks and tactile marks. has moved to the publications section of <http://www.brainguide.com/ralf-sieckmann>, the compilation being updated at the beginning of each year.

Everyone who has ever tried to make a clearance on these types of trademarks knew about the difficulties searching for these marks.

The 2012 version of the Non-Traditional Trademarks Archive, pdf version, can be downloaded here

[Colour trade and service marks](#)

[Motion picture trade and service marks](#)

[Sound trade and service marks \(Germany only\)](#)

[Sound trade and service marks \(rest of the world\)](#)

[Hologram trade and service marks](#)

[Smell and aroma trade and service marks](#)

[Tactile trade and service marks](#)

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http://www.copat.de/mn_nl_dus.htm

<http://www.brainguide.com/ralf-sieckmann>

Studied chemistry [Ph.D.], economics and law, (German) Patent Attorney, European Patent and Trademark Attorney. Working for more than 20 years in industrial property rights protection, specialized in patent and trademark law; management consultancy in IP (patent and trademark strategies). [Lecturer on IP Law at Duesseldorf University for Applied Sciences](#). Author of various publications and lectures on Intellectual Property matters, including. BUSINESS ANGELS FAZ-Institut (2002), Lesson on trademarks in INTELLECTUAL PROPERTY, Managementcircle Edition (2006 - 2012); Lessons on Madrid Agreement and Protocol, Community trade marks after publication in INTERNATIONALES MARKENRECHT, Managementcircle Edition (2007, 2008), Sound Trade and Service Marks – Legal aspects in AUDIO BRANDING Nomos (2009), Protection of multisensual stimuli on the trademarks act in MULTISENSUALE MARKENKOMMUNKATION, Gabler (2012),

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Languages: German, English, French

Further reading:

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