

## **CP11: Questionnaire for User Associations - Examination of absolute grounds**

### **QUESTIONNAIRE FOR USER ASSOCIATIONS**

The project aims to harmonise the practice in the examination of formal requirements and grounds for refusal of new types of marks in order to prevent misalignments, multiplicity of practices and legal uncertainty as a consequence of different solutions being found to unprecedented issues. For the purposes of this questionnaire and this convergence project (CP11), the concept of new types of trade marks refers to sound, motion, multimedia and hologram marks.

The overview of all responses will serve as a basis for the discussions by the CP11 Working Group.

The project will run in two parallel work-streams. Work-stream 1 will take charge of the development of the common practice on the examination of formal requirements and absolute grounds for refusal of new types of marks. Work-stream 2 will assume the development of the common practice on relative grounds examination of new types of marks.

According to the general principle as established by the Court of Justice of the European Union, the criteria for examining formal requirements and absolute grounds for refusal should be the same for all types of marks. While fully respecting this principle, the new types of marks bring scenarios which have not yet been discussed. This questionnaire aims to identify and address issues that are specific to the new types of marks. In particular:

- The application of Sieckmann criteria to new types of marks: assessment of the requirements of clarity and precision.
- Inherent distinctiveness of new types of marks.
- Descriptiveness of new types of marks.
- Assessing whether new types of marks have become customary in the language or in the bona fide and established practices of the trade.
- Assessing whether new types of marks consist exclusively of the shape or another characteristic which results from the nature of the goods applied for, or necessary to obtain a technical result, or gives substantial value to the goods.

The documents prepared for the CP11 Working Group, as well as the minutes of the CP11 Working Group meeting may contain reference to the replies provided, and will be shared with MS IPOs, European IPOs and the user representatives in the EUIPO User Group. The following questions are related to the examination of absolute grounds for refusal or invalidity.

It is assumed in all cases below that the English-speaking public is the relevant public, and **GERIVAN** does not have any particular meaning.

### **BASIC QUESTIONS**

**Please indicate the User Association that you represent:**

Please write your answer here: **International Trademark Association (INTA)**

**Please indicate your name and email address (in case clarification is needed regarding any of your answers):**

Please write your answer here: **Carolina Oliveira, coliveira@inta.org**

## **EXAMINATION OF ABSOLUTE GROUNDS FOR REFUSAL OR INVALIDITY - GENERAL QUESTIONS**

**1. Would you expect the established principles of distinctiveness/descriptiveness to be applicable to the assessment of the verbal elements contained in a sound file (categorised either as “Sound mark” or “Other mark”)?**

Please choose **only one** of the following:

Yes

No

Other

Make a comment on your choice here:

**YES - The principles should also be applied to verbal elements in sound files.**

**The answer to the question of whether a mark or one of its elements is distinctive or descriptive should not depend on what type of mark it is.**

**The verbal element in a sound mark can have the same descriptive effect for the goods/services claimed as the element in a multipart word mark. The same applies to the question of distinctiveness.**

**2. Would you expect the established principles of distinctiveness/descriptiveness to be applicable to the verbal and/or figurative elements contained in a motion mark?**

Please choose **only one** of the following:

Yes

No

Other

Make a comment on your choice here:

**YES - In this respect, the same principal applies as for the sound mark (see reply to Question 1).**

**3. Would you expect the established principles of distinctiveness/descriptiveness to be applicable to the assessment of the verbal and/or figurative elements contained in a multimedia file (categorised either as “Multimedia mark” or “Other mark”)?**

Please choose **only one** of the following:

Yes

No

Other

Make a comment on your choice here:

**In this respect, the same principal applies as for the sound and motion marks (see replies to Questions 2 and 3).**

#### **EXAMINATION OF ABSOLUTE GROUNDS FOR REFUSAL OR INVALIDITY - SOUNDS**

**4. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Sound mark consisting of low quality or distorted sound**

**Class 30: Cereal snacks**

<https://www.youtube.com/watch?v=9SnIG5xf7rI>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

*The mark is not suitable as an indication of origin.*

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**5. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Very low volume sound**

**Class 41: Entertainment services**

<https://www.youtube.com/watch?v=4IOPYPB8bj8>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

*It is assumed that the Office would just point out to the applicant that the volume of the sound file is too low. Similarly as figurative marks must have a certain number of pixels, sound marks must have a certain volume.*





Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

*The exact sound intended to be protected cannot be determined on the basis of the sequence of notes alone.*

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**8. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**White noise**

**Class 30: Cereal snacks**

<https://www.youtube.com/watch?v=6Q3pkk3Kvbc>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

*The mark is not suitable as an indication of origin.*

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**9. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 25: Clothing**

[https://www.youtube.com/watch?v=qluPHLmw5\\_w](https://www.youtube.com/watch?v=qluPHLmw5_w)

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

*If one takes into account that individual letters can also be registered as trademarks, this should also apply to individual tones. In this specific case, it would then have to be examined whether the tone is understood in concrete terms as an indication of origin. Otherwise, the mark should not be considered distinctive.*

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**10. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 25: Clothing**

<https://www.youtube.com/watch?v=en0QovhFYNU>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

*We believe that there are no absolute grounds for refusal preventing this mark from being registered.*

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**11. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 25: Clothing**

<https://www.youtube.com/watch?v=yzbY371tj0E>



Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

*We believe that there are no absolute grounds for refusal preventing this mark from being registered. The stringing together of identical letters can be protected as a trademark. The same should therefore also apply to tones. In this specific case, it would then have to be examined whether the tones are understood in concrete terms as an indication of origin. Otherwise, the mark should not be considered distinctive.*

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**12. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 25: Clothing**

<https://www.youtube.com/watch?v=gNKR2uXhcw8>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

*We believe that there are no absolute grounds for refusal preventing this mark from being registered.*

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

- The mark is not distinctive (Art. 4(1)(b) TMD)
- The mark is descriptive (Art. 4(1)(c) TMD)
- The mark is a customary sign or indication (Art. 4(1)(d) TMD)
- The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)
- Other, please elaborate

**13. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 45: Security services**

<https://www.youtube.com/watch?v=KkzFaObyqjE>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

*We believe that there are no absolute grounds for refusal preventing this mark from being registered.*

- The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)
- The mark is not distinctive (Art. 4(1)(b) TMD)
- The mark is descriptive (Art. 4(1)(c) TMD)
- The mark is a customary sign or indication (Art. 4(1)(d) TMD)
- The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**14. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 30: Cereal snacks**

<https://www.youtube.com/watch?v=Ve-2g3XOgos>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

*We believe that there are no absolute grounds for refusal preventing this mark from being registered. The melody may be interpreted by the relevant public as an indication of origin.*

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**15. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 30: Cereal snacks**

<https://www.youtube.com/watch?v=jllTLc2M76o>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

*We believe that there are no absolute grounds for refusal preventing this mark from being registered. The melody may be interpreted by the relevant public as an indication of origin. The length of the melody should not affect registrability.*

- The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)
- The mark is not distinctive (Art. 4(1)(b) TMD)
- The mark is descriptive (Art. 4(1)(c) TMD)
- The mark is a customary sign or indication (Art. 4(1)(d) TMD)
- The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)
- Other, please elaborate

**16. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 31: Foodstuffs and fodder for animals**

<https://www.youtube.com/watch?v=vy9-YE-vePs>

Please choose all that apply and provide a comment:

- I would not expect the mark to be objected to/rejected
- The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)
- The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

*The tone sequence consists exclusively of the barking of a dog and thus exclusively of "signs" which are interpreted by the relevant public as an indication of the target of the goods.*

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**17. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 25: Clothing**

<https://www.youtube.com/watch?v=25RaDdpsvGI>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

*It is likely that the sound of the cow is interpreted by the relevant public as meaning that the clothes marked are made of leather.*

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**18. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

### **Class 42: Weather forecasting services**

[https://www.youtube.com/watch?v=HbOPV2H\\_7Cg](https://www.youtube.com/watch?v=HbOPV2H_7Cg)

Please choose all that apply and provide a comment:

- I would not expect the mark to be objected to/rejected
- The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)
- The mark is not distinctive (Art. 4(1)(b) TMD)
- The mark is descriptive (Art. 4(1)(c) TMD)
- The mark is a customary sign or indication (Art. 4(1)(d) TMD)
- The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)
- Other, please elaborate

**19. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

### **Class 39: Streetcar transport**

<https://www.youtube.com/watch?v=xf9yLA6DYvU>

Please choose all that apply and provide a comment:

- I would not expect the mark to be objected to/rejected
- The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)
- The mark is not distinctive (Art. 4(1)(b) TMD)

*The mark is made up of simple noises of daily life and is not suitable as an indication of the origin of transport services.*

- The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**20. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**“Premium”**

**Class 29: Fruit jams**

<https://www.youtube.com/watch?v=U7B1q0XIZp0>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

*The trademark is not suitable as an indication of origin. It's content is a pure advertisement.*

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**21. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**“Gerivan”**

**Class 25: Clothing**

<https://www.youtube.com/watch?v=VWJ2jjEIhuM>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

*We believe that there are no absolute grounds for refusal preventing this mark from being registered.*

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**22. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**A voice saying something that is not recognisable**

**Class 25: Clothing**

[https://www.youtube.com/watch?v=\\_nnWX\\_RKtaY](https://www.youtube.com/watch?v=_nnWX_RKtaY)

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)



The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

*The Office could draw the applicant's attention to the fact that the sound file filed is, in his view, faulty and would request the submission of a faultless file.*

**23. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 29: Fruit jams**

<https://www.youtube.com/watch?v=F7BAZCxph24>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

*The trademark is not suitable as an indication of origin. Its content is a pure advertisement. The fact that the word "Premium Quality" is sung does not change this.*

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**24. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 29: Fruit jams**

<https://www.youtube.com/watch?v=1T9HroLF1c4>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

*The trademark is not suitable as an indication of origin. It's content is a pure advertisement.*

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**25. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 32: Non-alcoholic beverages, beer**

<https://www.youtube.com/watch?v=HZWYvtn9N5c>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

*The sound of a beer can being opened is interpreted by the relevant public as a descriptive indication of the nature of the product.*

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**26. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 41: Entertainment services**

<https://www.youtube.com/watch?v=uToMiXmsW14>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**27. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 33: Alcoholic beverages**

<https://www.youtube.com/watch?v=j5S40dD-sr8>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

*The sound of ice cubes falling into glass is descriptive for alcoholic beverages.*

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**28. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 16: Recipe books**

<https://www.youtube.com/watch?v=iiixBCFQih0>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

*The sound of a frying pan is descriptive for the goods "cookbooks", as it is understood by the public as an indication of the purpose of the books, namely as instructions for cooking.*

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**29. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 42: Computer programming**

<https://www.youtube.com/watch?v=VsEhDo7NLIM>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**30. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

## Class 41: Movie showing

<https://www.youtube.com/watch?v=229BWv8UA6c>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

**Comment: This is only likely to be raised in relation to DVDs of this film or audio books relating to the book itself**

The mark is descriptive (Art. 4(1)(c) TMD)

**Comment: this is only likely to be raised in relation to DVDs of this film or audio books relating to the book itself**

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**Comment:** the above link appears to be broken as no movie plays, only an audio track of James Bond saying "My Name's Bond. James Bond". Therefore assuming only the video element is missing and what should have been playing is an exert from George Lazenby's portrayal of Bond in the 1969 On Her Majesty's Secret Service, we comment as follows:

- The trademark is likely to be objected to as not known what goods and services being applied for;

- If the Question was actually the suitability of a movie clip that doesn't correctly play then we would expect the mark to be objected under Article 4(1)(a) TMD.

**31. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 41: Entertainment services**

<https://www.youtube.com/watch?v=nEMm6mxnLms>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

**Comment: Whilst the mark has the potential to be memorable, even for entertainment services per se, it fails to meet the provisions of Art.4(1)(a) TMD as whilst you may or may not recognise it you would not know concisely what the note sequence is purely from this audio track.**

The mark is not distinctive (Art. 4(1)(b) TMD)

**Comment: this objection is only likely to arise in relation to the subcategory of entertainment services such as providing a venue to present this particular film.**

The mark is descriptive (Art. 4(1)(c) TMD)

**Comment: this objection is only likely to arise in relation to the subcategory of entertainment services such as providing a venue to present and/or presenting this particular film.**

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**Comment:** Our answers assume the mark in question is an audio track or sound mark for the audio tonal sequence taken from the SCI-FI film Close Encounters of the Third Kind (1977).

**32. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**An extract of a Martin Luther King speech**

**Class 37: Construction services**

<https://www.youtube.com/watch?v=lnAKaDB7H2c>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

*We believe that there are no absolute grounds for refusal preventing this mark from being registered. The statement "I have a dream" can serve as an indication of origin in connection with construction services.*

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

Objected to/rejected under 4(3)(a) TMD because Martin Luther King speech is protected by copyright.



**33. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**An extract of a Martin Luther King speech**

**Class 16: Printed matters, books**

<https://www.youtube.com/watch?v=lnAKaDB7H2c>

Please choose all that apply and provide a comment:

- I would not expect the mark to be objected to/rejected
- The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)
- The mark is not distinctive (Art. 4(1)(b) TMD) x but query if acceptable
- The mark is descriptive (Art. 4(1)(c) TMD)

*Unlike construction services, Martin Luther King's statement in connection with books is descriptive, since the public can interpret the mark as an indication of the content of the books (books about Martin Luther King).*

- The mark is a customary sign or indication (Art. 4(1)(d) TMD)
- The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)
- Other, please elaborate

Objected to/rejected under 4(3)(a) TMD because Martin Luther King speech is protected by copyright

**34. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Five seconds of Fur Elise – Beethoven**

**Class 41: Entertainment services**

<https://www.youtube.com/watch?v=oB0lgeLgbs8>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

**Comment: Regardless of the question of competing copyrights, the sequence of sounds has the degree of distinctiveness necessary for registration as a trademark. Nor is the sound sequence descriptive for the broad term “entertainment services” in class 41.**

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**35. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**5 seconds of Vivaldi’s spring**

**Class 9: CDs, DVDs**

<https://www.youtube.com/watch?v=AWBdlHldUOU>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

**Comment: As per our reply to question 34, the sound sequence is not descriptive for the broad term “CDs, DVDs” in class 9. Such terms only fall to a finding of descriptiveness or non-distinctiveness in accordance with Art.’s 4(1)(b) and (c) TMD if the goods relate to Vivaldi, or this particular composition.**

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**36. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 16: Printed matters, books**

<https://www.youtube.com/watch?v=aF10hXCVFyI>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

**Comment: The audio sequence is not descriptive for the broad term “printed matter, books”.**

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

**The mark is not distinctive (Art. 4(1)(b) TMD)**

**Comment: An objection is only likely to arise if in relation to a particular subcategory of these broad terms, i.e. printed matter being the book entitled “Little Red Riding Hood” (the above link is an extract from an audio book of Little Red Riding Hood).**

**The mark is descriptive (Art. 4(1)(c) TMD)**

**Comment: The mark is descriptive (Art. 4(1)(c) TMD) – An objection is only likely to arise if in relation to a particular subcategory of these broad terms, i.e. printed matter being the book entitled Little Red Riding Hood” (the above link is an extract from an audio book of Little Red Riding Hood).**

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**37. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 9: Electric current control devices**

<https://www.youtube.com/watch?v=Tpu1y6bAdR4>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

**Comment: The mark can be protected in respect of the goods claimed in Class 9. In particular, it is not descriptive, since the thunder noise does not allow a conclusion to electrical control units at first hand.**

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

**Comment: If the audio track is open to misunderstanding (i.e. it is difficult to understand if the sound is of a gun retort and/or other rather than a crack of thunder per se) an objection could be raised under Art. 4(1)(a)**

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**38. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 9: Automated teller machines (ATM)  
Class 36: Financial services**

<https://www.youtube.com/watch?v=WUOxOtzkT6w>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

*Since the sound of the cash register is not identical to that of an ATM machine, the sound mark should be registrable for the class 9 goods. However, since the sound brings to mind financial services in the relevant public, it cannot be registered for class 36 services.*

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**39. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

## Class 12: Motorbikes

<https://www.youtube.com/watch?v=eEBEla8WpOE>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

**The mark is not distinctive (Art. 4(1)(b) TMD)**

The mark is descriptive (Art. 4(1)(c) TMD)

*The sound of a motorbike is descriptive for motorbikes.*

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

**The mark consists exclusively of a characteristic, which results from the nature of the goods themselves**, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**40. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

## Class 34: Articles for use with tobacco

<https://www.youtube.com/watch?v=uRKPXqi8MIU>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

**The mark is not distinctive (Art. 4(1)(b) TMD)**

**The mark is descriptive (Art. 4(1)(c) TMD)**

*The sound of a lighter, which is an article for use with tobacco, is descriptive for those kinds of goods in class 34.*

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**41. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 44: Medical services**

<https://www.youtube.com/watch?v=nkK0wvJ7ymU>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

**The mark is not distinctive (Art. 4(1)(b) TMD)**

The mark is descriptive (Art. 4(1)(c) TMD)

*The sound of a siren, e.g. of an ambulance, is descriptive for medical services.*

**The mark is a customary sign or indication (Art. 4(1)(d) TMD)**

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**42. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

## Class 7: Lifts

[https://www.youtube.com/watch?v=-IRYl\\_vbTwE](https://www.youtube.com/watch?v=-IRYl_vbTwE)

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

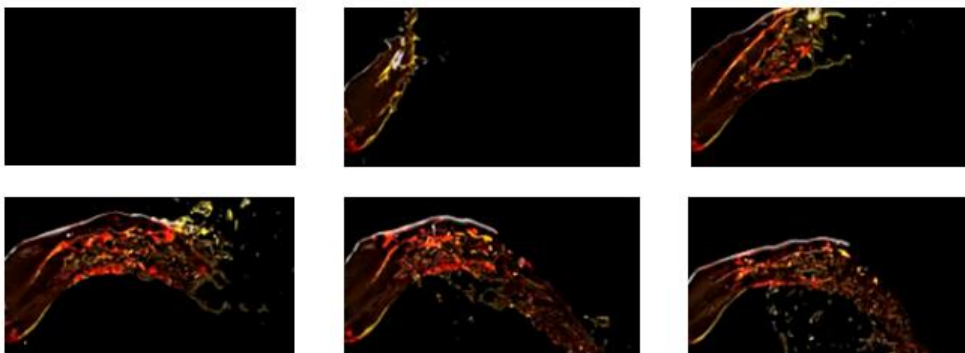
Other, please elaborate

## EXAMINATION OF ABSOLUTE GROUNDS FOR REFUSAL OR INVALIDITY - MOTION

43. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:

Sequence of still images. Description: the sequence shows from the upper-left corner to the right wine being poured

### Class 43: Wine bars





Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

*The trademark is descriptive for the services claimed, since its pictures only show what happens in a wine bar.*

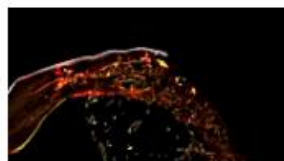
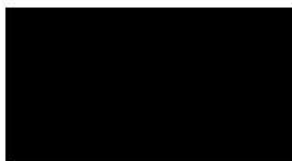
The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**44. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Motion mark. No description filed**



Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

**Comment: a suitable verbal description would overcome this objection.**

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**45. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Video of boiling substance**

**Class 42: Chemical laboratories**

<https://www.youtube.com/watch?v=XjBIh04tWSA>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

*The trademark is descriptive, as its content is limited to the representation of typical processes in a chemical laboratory.*

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**46. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 41: Entertainment services**

[https://www.youtube.com/watch?v=a\\_kckNKMWkU](https://www.youtube.com/watch?v=a_kckNKMWkU)

Please choose all that apply and provide a comment:

- I would not expect the mark to be objected to/rejected
- The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)
- The mark is not distinctive (Art. 4(1)(b) TMD)
- The mark is descriptive (Art. 4(1)(c) TMD)

*The trademark is descriptive, as its content is limited to the representation of simple lighting effects; such lighting effects are more typically used in connection with entertainment services, such as dance events.*

- The mark is a customary sign or indication (Art. 4(1)(d) TMD)
- The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)
- Other, please elaborate

**47. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 36: Insurance services**

<https://www.youtube.com/watch?v=Ssxao-FoG7Q>

Please choose all that apply and provide a comment:

- I would not expect the mark to be objected to/rejected

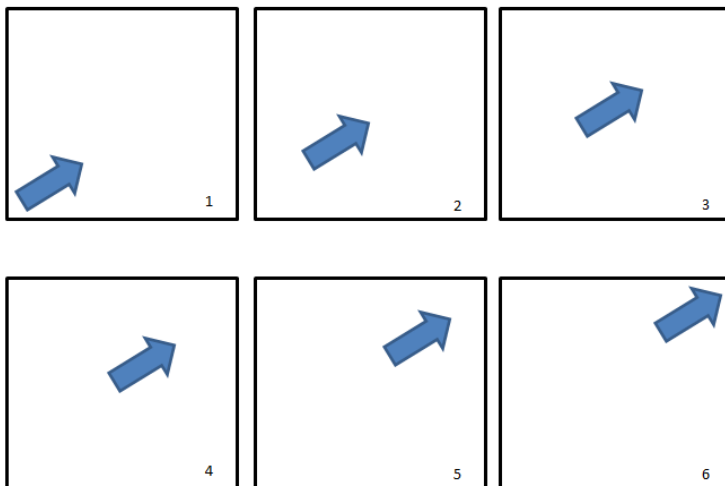
*The mark is registrable. Its content, the representation of a cyclist, is not descriptive in relation to the services claimed. Furthermore, it appears that the mark has the minimum degree of distinctiveness required for registration.*

- The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)
- The mark is not distinctive (Art. 4(1)(b) TMD)
- The mark is descriptive (Art. 4(1)(c) TMD)
- The mark is a customary sign or indication (Art. 4(1)(d) TMD)
- The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)
- Other, please elaborate

**48. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Motion mark: sequence of still images. Description is provided, also indicating the time of movement: a blue arrow moves gradually from the left bottom to the top right, where the whole movement lasts 3 seconds**

**Class 39: Transport services**



Please choose all that apply and provide a comment:

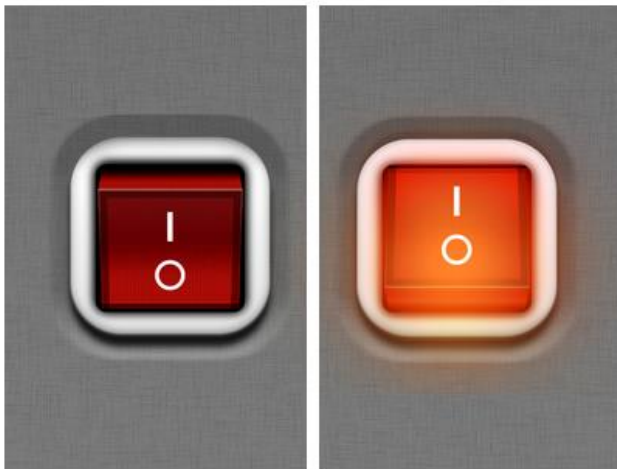
- I would not expect the mark to be objected to/rejected

*The abstract presentation of a transport process should be protectable as a trademark.*

- The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)
- The mark is not distinctive (Art. 4(1)(b) TMD)
- The mark is descriptive (Art. 4(1)(c) TMD)
- The mark is a customary sign or indication (Art. 4(1)(d) TMD)
- The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)
- Other, please elaborate

**49. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 9: Electrical switches**



Please choose all that apply and provide a comment:

- I would not expect the mark to be objected to/rejected
- The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)
- The mark is not distinctive (Art. 4(1)(b) TMD)

- The mark is descriptive (Art. 4(1)(c) TMD)

*The mark is descriptive. Its content is limited to the representation of the goods for which it claims protection.*

- The mark is a customary sign or indication (Art. 4(1)(d) TMD)

- The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

- Other, please elaborate

**50. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 9: Electrical switches**

<https://www.youtube.com/watch?v=qQfIPf1Z3OI>

Please choose all that apply and provide a comment:

- I would not expect the mark to be objected to/rejected

- The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

- The mark is not distinctive (Art. 4(1)(b) TMD)

- The mark is descriptive (Art. 4(1)(c) TMD)

*The mark is descriptive. Its content is limited to the representation of the goods for which it claims protection.*

- The mark is a customary sign or indication (Art. 4(1)(d) TMD)

- The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

- Other, please elaborate

**51. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 29: Fruit jams**

<https://www.youtube.com/watch?v=tJ5Kmt9aG6M>

Please choose all that apply and provide a comment:

- I would not expect the mark to be objected to/rejected
- The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)
- The mark is not distinctive (Art. 4(1)(b) TMD)

*The mark is not distinctive. The representation is limited to the reproductions of the word "premium" which only has a laudatory purpose in relation to fruit jams.*

- The mark is descriptive (Art. 4(1)(c) TMD)
- The mark is a customary sign or indication (Art. 4(1)(d) TMD)
- The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)
- Other, please elaborate

**52. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 29: Fruit jams**

<https://www.youtube.com/watch?v=QEKL9lhtJTE>

Please choose all that apply and provide a comment:

- I would not expect the mark to be objected to/rejected
- The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

*The mark is not distinctive. The representation is limited to the reproductions of the word "premium" which only has a laudatory purpose in relation to fruit jams.*

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**53. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 29: Fruit jams**

<https://www.youtube.com/watch?v=2mH8ySH3SZ0>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

*The mark is not distinctive. The representation is limited to the reproductions of the word "premium" which only has a laudatory purpose in relation to fruit jams.*

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)



Other, please elaborate

**54. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 29: Fruit jams**

<https://www.youtube.com/watch?v=P3IOHt0hhDQ>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

*The mark is not distinctive. The representation is limited to the reproductions of the word "premium" which only has a laudatory purpose in relation to fruit jams.*

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**55. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 25: Clothing**

[https://www.youtube.com/watch?v=qdAFyd7cD\\_E](https://www.youtube.com/watch?v=qdAFyd7cD_E)

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

*We believe that there are no absolute grounds for refusal preventing this mark from being registered.*

- The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)
- The mark is not distinctive (Art. 4(1)(b) TMD)
- The mark is descriptive (Art. 4(1)(c) TMD)
- The mark is a customary sign or indication (Art. 4(1)(d) TMD)
- The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)
- Other, please elaborate

**56. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 42: Weather forecasting services**

<https://www.youtube.com/watch?v=qztREg40gR8>

Please choose all that apply and provide a comment:

- I would not expect the mark to be objected to/rejected
- The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

*The brand is descriptive. The presentation of the cloud is interpreted by the relevant public as an indication of the content of the services in Class 42.*

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**57. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 31: Pet food**

<https://www.youtube.com/watch?v=Tq7OSIGrdK8>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

*The mark is descriptive. The representation is limited to the drawing of a turtle. This is perceived by the relevant public as an indication for the intended use of the product, namely animal feed for turtles/reptiles. A figurative mark with an identical image would also be rejected as descriptive.*

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**58. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 39: Transport services**

<https://www.youtube.com/watch?v=YsDBAj9dK9g>

Please choose all that apply and provide a comment:

- I would not expect the mark to be objected to/rejected
- The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)
- The mark is not distinctive (Art. 4(1)(b) TMD)
- The mark is descriptive (Art. 4(1)(c) TMD)

*The brand is descriptive. The display is limited to the display of a transport process.*

- The mark is a customary sign or indication (Art. 4(1)(d) TMD)
- The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)
- Other, please elaborate

**59. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 41: Entertainment services**

<https://www.youtube.com/watch?v=2UkqiV6oTHY>

Please choose all that apply and provide a comment:

- I would not expect the mark to be objected to/rejected
- The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)
- The mark is not distinctive (Art. 4(1)(b) TMD)
- The mark is descriptive (Art. 4(1)(c) TMD)

*The mark is descriptive. The representation is limited to the representation of a ballerina. The relevant public will assume that ballet performances (=entertainment services) will be offered under the brand name.*

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**60. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 45: Legal services**

<https://www.youtube.com/watch?v=3RG2LPr0vgc>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

*The brand is descriptive. The figure of justice is easily understood by the relevant public as an indication for legal services.*

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**61. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 9: Scuba diving masks**

<https://www.youtube.com/watch?v=WZPh3IY81bs>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

*The representation of a sign which can be considered divers' language is descriptive for diving goggles, since the gesture can be interpreted as an indication of the intended use of the goods.*

*It can also be assumed that relevant sections of the relevant public recognise the meaning of the sign, since they are divers and therefore familiar with the relevant sign language.*

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**62. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 9: remote controls**

<https://www.youtube.com/watch?v=m97vqvUbUUk>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

*We believe that there are no absolute grounds for refusal preventing this mark from being registered.*

- The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)
- The mark is not distinctive (Art. 4(1)(b) TMD)
- The mark is descriptive (Art. 4(1)(c) TMD)
- The mark is a customary sign or indication (Art. 4(1)(d) TMD)
- The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)
- Other, please elaborate

**63. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 9: Smartphones**

<https://www.youtube.com/watch?v=XEFTkeTFMnE>

Please choose all that apply and provide a comment:

- I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

*The mark is descriptive. Its representation is limited to "other characteristics" of the goods, namely the way in which a touch screen is operated.*

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**64. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 39: Transport services**

<https://www.youtube.com/watch?v=TISm7DNncYU>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

*The mark is not descriptive. The presentation shows typical elements of a transport process, namely the work of a stewardess on board of an aircraft. However, different from the video at Question 59, the transport process itself is not displayed.*

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**65. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 20: Furniture and furnishing**

<https://www.youtube.com/watch?v=cUL3DIGbYAg>



Please choose all that apply and provide a comment:

- I would not expect the mark to be objected to/rejected
- The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)
- The mark is not distinctive (Art. 4(1)(b) TMD)
- The mark is descriptive (Art. 4(1)(c) TMD)

*Absolute grounds for refusal exist. The trade mark is essentially limited to the representation of the construction of pieces of furniture and is therefore descriptive of these goods.*

- The mark is a customary sign or indication (Art. 4(1)(d) TMD)
- The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)
- Other, please elaborate

#### **EXAMINATION OF ABSOLUTE GROUNDS FOR REFUSAL OR INVALIDITY - MULTIMEDIA**

**66. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 25: Sports clothing**

[https://www.youtube.com/watch?v=F9oJAS\\_gHZ0](https://www.youtube.com/watch?v=F9oJAS_gHZ0)

Please choose all that apply and provide a comment:

- I would not expect the mark to be objected to/rejected
- The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)
- The mark is not distinctive (Art. 4(1)(b) TMD)
- The mark is descriptive (Art. 4(1)(c) TMD)

*Absolute grounds for refusal exist. The trademark is limited to the representation of the intended use of sportswear*

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**67. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Low resolution video**

**Class 41: Entertainment services**

<https://www.youtube.com/watch?v=kpembD1U9jU>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

*The mark is not distinctive. Neither picture nor sound are suitable to serve as an indication of origin.*

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**68. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Video with distorted sound**

**Class 25: Clothing**

<https://www.youtube.com/watch?v=kpembD1U9jU>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

*The mark is not distinctive. Neither picture nor sound are suitable to serve as an indication of origin.*

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**69. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 42: Weather forecasting services**

[https://www.youtube.com/watch?v=3k\\_O0SortkU](https://www.youtube.com/watch?v=3k_O0SortkU)

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

*The cloud depicted as a trademark is descriptive of the services claimed in Class 42, and the sound components do not change this.*

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**70. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 25: Clothing**

<https://www.youtube.com/watch?v=hn6xSLshtPc>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

*The mark is not distinctive. Neither picture nor sound are suitable to serve as an indication of origin.*

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**71. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 25: Clothing**

<https://www.youtube.com/watch?v=9ATKNqUmKsc>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

*We believe that there are no absolute grounds for refusal preventing this mark from being registered.*

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**72. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 29: Fruit snacks**

<https://www.youtube.com/watch?v=wUHlMrNwOa8>

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

*The cloud depicted as a trademark is descriptive. Both picture and sound describe the goods claimed in Class 29.*

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**73. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 41: Entertainment services**

[https://www.youtube.com/watch?v=F9oJAS\\_gHZ0](https://www.youtube.com/watch?v=F9oJAS_gHZ0)

Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

*The brand is descriptive. The clip shows a scene from a football game in a stadium. The scene is descriptive for "the organization and execution of sporting events", which are entertainment services.*

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

## EXAMINATION OF ABSOLUTE GROUNDS FOR REFUSAL OR INVALIDITY - HOLOGRAM

74. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:

Class 9: Access control devices



Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**75. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 21: Kitchen utensils**



Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected x  
Shape may make it distinctive.

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate



**76. Please indicate the grounds on which you may expect the mark below to be objected to/rejected:**

**Class 9: Credit cards**



Please choose all that apply and provide a comment:

I would not expect the mark to be objected to/rejected

*We believe that there are no absolute grounds for refusal preventing this mark from being registered.*

The mark is not clear and precise (Art. 4(1)(a) of the Trade Mark Directive)

The mark is not distinctive (Art. 4(1)(b) TMD)

The mark is descriptive (Art. 4(1)(c) TMD)

The mark is a customary sign or indication (Art. 4(1)(d) TMD)

The mark consists exclusively of a characteristic, which results from the nature of the goods themselves, or is necessary to obtain a technical result, or gives substantial value to the goods (Art. 4(1)(e) TMD)

Other, please elaborate

**FINAL CONSIDERATIONS**

**77. Please indicate if there is any case law from any jurisdiction that you consider relevant to any issue on absolute grounds for refusal or invalidity involving sound, motion, multimedia and hologram marks:**

You may upload it as a Word document in its original language or in English if you have the document translated (please highlight the relevant paragraphs). Should you experience any problems, please email the file to [Irene.MARUGAN@euipo.europa.eu](mailto:Irene.MARUGAN@euipo.europa.eu)

Kindly attach the aforementioned documents along with the survey

We could not identify any relevant case-law.

**78. What are the main issues that you foresee for users in relation to the absolute grounds examination of new types of marks?**

Please write your answer here:

The main issues will most likely be similar to those applicable to 3D marks, namely that the general public is not accustomed to perceive the new types of marks (so called nontraditional marks, 'NTMs') as trademarks, in the sense of origin indicators.

A uniform approach for the examination of such marks is difficult to develop. While for classical trademark forms a consolidated registration practice has already been developed in recent decades, this is not yet the case with NTMs.

Taking into account the difficulties that still exist today, despite the many years of experience of European trademark offices with traditional trademarks, we fear that the creation of such uniform standards for NTMs may still take a long time.

This is especially true, since the examination of traditional trademarks is sometimes easier than the examination of NTMs. Traditional marks usually offer less scope for interpretation, for example when it comes the question of determining if the mark is descriptive.

**79. Do you foresee any risks related to the agreement of a Common Practice on absolute grounds examination of new types of marks?**

Please write your answer here:

One risk that could exist is that the versatility of NTMs cannot be sufficiently taken into account in uniform examination standards. As a consequence, applications for which suitable example(s) is/are not included in the general rules may be rejected prematurely.