

Chapter 10: Registration of a 'sign'

March 2020 update

Colour combinations and registrability

In *Red Bull v EUIPO*, C-124/18 P, ECLI:EU:C:2019:641, the CJEU held that a combination of two colours, such as Red Bull's blue and silver, requires information about the colours to be registered as well as a precise description of how these colours will be applied when in use.

Phrases and distinctiveness

The Fourth Board of Appeal of EUIPO held that the phrase 'AGING BACKWARDS' for fitness-related goods and services in Classes 9 and 42 could not be registered as an EU trade mark (Case R 743/2018-4, 17 April 2019). The distinctiveness of the mark had to be assessed by reference to the goods and services for which registration was sought and by reference to the perception of the sign by the relevant public. The Board considered that the relevant public would consider the sign as a laudatory slogan (i.e. the promise that the use of relevant goods would help consumers look younger). As such, the mark was deemed to lack distinctiveness in order to achieve registration.