

DISTINCTIVE CHARACTER

Opinion of Advocate General in the joined cases C 84/17 P Société des produits Nestlé SA/Mondelez UK Holdings & Services Ltd, formerly Cadbury Holdings Ltd, and EUIPO, C 85/17 P Mondelez UK Holdings & Services Ltd, formerly Cadbury Holdings Ltd/EUIPO and C 95/17 P EUIPO/Mondelez UK Holdings & Services Ltd, formerly Cadbury Holdings Ltd.



Summary: The Advocate General reminds that it would be disproportionate to require the proof the distinctive character acquisition by the use in respect of each one of the Member States.

This does not mean that a trademark applicant can leave aside entire regions and markets. The geographical importance must be considered, as well as the region distribution where the acquired distinctive character has been proved, so that it is guaranteed that the proofs from which the

extrapolation for the whole Union is made refer to a representative proof both quantitative and geographically.

He suggests the Court of Justice refuses the cassation appeals lodged by Nestlé and by the EUIPO as it is considered that Nestlé did not bring data demonstrating the filed proofs in relation to the acquisition of the distinctive character in certain EU territories may be used as the basis to extrapolate said conclusion to rest of the countries where no proof was filed in relation to the acquisition of the distinctive character based on prior use.

*Source: curia.europa.eu

INFRINGEMENT HORCHATA DEVICE

Lidl sued for patent infringement by an *horchata* producer from Valencia.

A small *horchata* producer from Valencia, Andoni Monforte, has sued the German supermarket giant, Lidl, for commercializing a household device for making *horchata* that, supposedly, infringes his patent for this device.

Monforte states that the alleged copy of his device by Lidl has caused the plummet of his sales across Europe, for which he claims a compensation and the product recall from all the Lidl shops that have sold it so far.

*Source (in Spanish): eldiario.es

EUTM CANCELLATION REQUIREMENTS

Judgment of the Court of Justice of the EU of 19 April 2018. Case C-75/17. FIESTA HOTELS&RESORT, SL vs EUIPO/RESIDENCIAL PALLADIUM, SL.

Object: European Union Trademark. Application for EUTM cancellation based on a non-registered tradename. Requirements.

Summary: In this judgment, the CJEU reminds that the owner of a sign used in the market may be eligible to obtain an EUTM cancellation if said sign meets four cumulative requirements:

- (i) The sign must be used in the market;
- (ii) Its scope must not be solely local [these two requirements must be construed under the EU Law];
- (iii) The right to use the sign must be acquired according to the Member State in which it was used before the EUTM application;
- (iv) The right to said sign allows its owner to forbid the use of a later trademark [these two requirements are construed under the law regulating the sign concerned]. The CJEU refuses the cassation appeal.

*Source (in Spanish and French only): curia.europa.eu

DESCRIPTIVENESS AND LACK OF DISTINCTIVE CHARACTER

Judgment of the European General Court of 24 April 2018. Cases T 207/17 and T 208/17. Senetic S.A. vs EUIPO/ HP Hewlett Packard Group LLC.



Object: European Union Trademark. Application for EUTM cancellation based on absolute grounds (descriptiveness and lack of distinctive character)

Summary: The EGC refuses the appeals lodged by Senetic and confirms the validity of the EUTM Registration “HP” as it is considered that it cannot be concluded that, generally, a trademark is descriptive simply because it is made up of one or two letters.

There must be a relation direct and specific enough between the sign and the goods and services concerned for the interested public to immediately appreciate the sign as a description of the goods and services concerned or one of its features.

Likewise, it is considered that the combination of said letters is not simply perceived as an indication lacking distinctive character, mainly when the target public can understand the sign “HP” as a reference to the names Hewlett and Packard, surnames of the company founders.

*Source: curia.europa.eu

SUBSTANCE POMPEII CONSERVATION

Spanish technology for the conservation of Pompeii.



A team of researchers from the University of País Vasco, UPV, has patented a chemical substance, of natural origin, to contribute to the conservation of the artistic heritage of the city of Pompeii. The substance has been synthesized from oils and plants from the own archaeological site, and its function is avoiding the growing of plants and microorganisms that attack the walls of the historic city. The UPV has signed an agreement with the Pompeii Archaeological Park to continue studying the advances in this field and develop a mortar for

restructuring deposits.

"ART, CULTURE AND BLOCKCHAIN"

Cristina Martínez-Tercero, lawyer from PADIMA's Legal Area and Head of our Madrid office, had the chance of participating in the round table "**Art, Culture and Blockchain**", organized by the University Centre Villanueva.

During the round table, some reflections and questions on the current art situation as cultural manifestation of Spain arose, and how the new technologies (and, in particular, Blockchain) will transform the art and culture world in general. [Read more.](#)



MARCA ESPAÑA MADE IN ALICANTE

PADIMA celebrates its 20th anniversary and World Intellectual Property Day with the conference: MARCA ESPAÑA MADE IN ALICANTE.

A conference in which some of the most outstanding companies in our province such as **LEVANTINA, BOCOPA, VERDÚ CANTÓ SAFFRON SPAIN, WONDERS, SUAVINEX, PIKOLINOS, CONFECTIONARY HOLDING – Turrón EL LOBO, ACTIU, GIMENEZ GANGA, MINILAND AND SHA WELLNESS CLINIC**, shared their experience on how they manage their trademarks and the role they play in their international reputation.

Two interesting discussion tables moderated by the representatives of important national associations such as [FORO DE MARCAS RENOMBRADAS](#) and [ANDEMA](#); and a closing by the representative of Institutional Relations of [MARCA ESPAÑA](#), they put in value the contribution of companies from Alicante to the "Marca España".



More news on our seminar (in Spanish):

[Marca España reivindica las empresas alicantinas y su compromiso con la calidad, RSC y la innovación tecnológica](#)

[Los empresarios consideran la marca el mejor escudo para proteger sus valores](#)

Image Gallery:

<https://alicanteplaza.es/20-aniversario-de-padima-fotos-pepe-olivares>

<https://www.padima.es/blog/11-de-las-mejores-empresas-de-la-provincia-reunidas-por-padima/>

NEW DATA PROTECTION REGULATION

What will happen from 25 May on, when the new Data Protection Regulation will come into force?

We tell you everything in this interesting post of our lawyer **Cristina Martínez-Tercero** in cooperation with The Social Media Family.

[Read more](#)