

**Decision on the inherent distinctiveness of an application for
a European Union trade mark
(Article 7 EUTMR)**

Alicante, 12/12/2025

Abion Ireland Limited
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Application No: **019172020**
Your reference: **0321.6915**
Trade mark:



Mark type: **Figurative mark**
Applicant: **Charlotte Tilbury TM Limited
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I. Summary of the facts

On 25/04/2025 the Office issued a Notice of grounds for refusal pursuant to Article 7(1)(b) EUTMR because it found that the trade mark applied for is devoid of any distinctive character.

The goods for which the grounds for refusal were raised were:

Class 3 *Cosmetics; make up; skin care preparations; moisturisers; body care preparations; essential oils for personal use; lotions, creams and conditioners for the face, hands and body; beauty masks; abrasives; after-shave lotions; aloe vera preparations for cosmetic purposes; antiperspirants; aromatics; cosmetic preparations for baths; bleaching preparations for cosmetic purposes; breath freshening sprays; cosmetic kits; cosmetics for animals; cosmetic creams; cosmetic skin toners; skin whitening creams; depilatories; dry shampoos; cosmetic*

dyes; eau de cologne; false eyelashes; adhesives for affixing false hair; false nails; hair care preparations; hair colorants; hair dyes; hair lotions; hair spray; hair waving preparations; incense; make-up removing preparations; nail care preparations; oils for perfumes and scents; perfumery; perfumes; shampoos; shaving preparations; sunscreen preparations; sun-tanning preparations (cosmetics); tissues impregnated with cosmetic lotions; tissues impregnated with make-up remover; cotton pads impregnated with cosmetic lotions; cosmetic pads impregnated with make-up remover; toiletries; soap; air fragrance preparations; cleaning preparations; polishing preparations; mouthwash; toothpaste.

The grounds for refusal were based on the following main findings:

The distinctive character of a trade mark is assessed with reference to the goods or services for which protection is sought and the perception of the relevant public.

Simple geometric figures such as circles, lines, rectangles or common pentagons (or a combination thereof) cannot convey any message that will be remembered by consumers and will accordingly not be seen by them as a trade mark.

The sign consists merely of an elongated black square on a line. The relevant general consumer of different cosmetics, cleaning and beauty care preparations, diverse perfumery, false eyelashes and nails, abrasives, polishing and bleaching preparations in Class 3 would perceive it as simple figurative element that is *prima facie* incapable of transmitting a trade mark message. Taken as a whole, this is a simple figurative sign, and none of the elements have any unusual features in themselves.

On the relevant market, there exists a variety of used ornamentations. Therefore, it is a banal, commonplace sign which, owing to the simplicity thereof and the variety of forms used on the market, is not capable, on its own, of being perceived by the relevant public as an indication that enables identifying the commercial origin of the goods at issue.

Therefore, the sign is devoid of any distinctive character within the meaning of Article 7(1)(b) EUTMR.

II. Summary of the applicant's arguments

On 20/06/2025, the applicant requested an extension of time to reply to the abovementioned notice, which was granted by the Office.

The applicant submitted its observations on 01/09/2025, which may be summarised as follows.

1. The applicant quotes Article 7(1)(b), the recitals of the Directive and established case law related to the lack of distinctive character in general terms.
2. The applicant disagrees with the idea that geometric figures consisting of circles, lines, rectangles or common pentagons (or a combination thereof) cannot convey any message that will be remembered by the consumers.

3. Concerning the mark at stake, it can function as a badge of origin. It is not a simple, geometric shape, but 'a diamond shape also called a rhombus or quadrilateral, bisected by a line starting underneath the diamond which projects through the diamond, leaving a longer length projecting from the top of the diamond', which would be seen as unusual, original and memorable. Due to the elongation, the sign possesses at least a degree of an unusual and striking visual effect. Moreover, there is a geometric contrast between thickness and thinness and a tension between continuity and interruption due to the diamond placed part-way on the line. All this can give room to different interpretations. 'The Applicant submits that the geometric and aesthetic symmetry creates a visual symbol which is easily memorable to the consumer in relation to the objected-to goods.' The concept of the mark is in line with the idea of 'quiet luxury', which focuses on subtle sophistication.

4. The findings above are supported by the following case law.

- Decision of the Second Board of Appeal of 28 September 2015, in



Case R 1953/2014-2, § 22, is quoted, indicating that nowadays the trend for figurative marks is to be simple and stylised. Therefore, consumers are accustomed to relatively simple marks.

- Also, the decision of the Second Board of Appeal of 28 November



2013, in Case R 235/2013-2, (Device of a rhombus and a line), § 16 and 19 is quoted. The Board of Appeal found that the shape in this case was not a mere variation on a basic shape commonly used on the goods, having some degree of fancifulness.

- Finally, in the decision of 19 August 2022, in Case R 207/2022-2,



, § 22, the Second Board of Appeal established that:

the current trend is that figurative marks are simple and stylised in their design. Therefore, consumers are accustomed to perceiving the figurative marks as signs that are relatively simple, provided that they present an arrangement of elements which, taken as a whole, may make it memorable.

Even though the Office is not bound by its previous decisions, the case law above, especially Case R 235/2013-2, are strong precedents. Therefore, the refusal of the mark at stake would be illogical and contrary to the fundamental principles of equity and equal treatment.

5. The Office failed to cite established legal precedents and to provide adequate reasoning, as insufficient explanation and no evidence, especially

on the commonplaceness of similar signs used on the market, to support the Office's findings were provided.

6. The same sign has been published in the United Kingdom and registered in Bahrain, Oman, Saudi Arabia and United Arab Emirates.
7. The applicant includes a subsidiary claim for acquired distinctiveness through use.

III. Reasons

Pursuant to Article 94 EUTMR, it is up to the Office to take a decision based on reasons or evidence on which the applicant has had an opportunity to present its comments.

After giving due consideration to the applicant's arguments, the Office has decided to maintain the grounds for refusal.

1. The trade marks referred to in Article 7(1)(b) EUTMR are, in particular, those that do not enable the relevant public 'to repeat the experience[of a purchase], if it proves to be positive, or to avoid it, if it proves to be negative, on the occasion of a subsequent acquisition' of the goods or services concerned (27/02/2002, T-79/00, Lite, EU:T:2002:42, § 26). This is the case for, inter alia, signs commonly used in the marketing of the goods or services concerned (15/09/2005, T-320/03, Live richly, EU:T:2005:325, § 65).

It is established case-law that '[a] sign's distinctiveness can be assessed only by reference, first, to the goods or services in respect of which registration is sought and, second, to the relevant public's perception of that sign' (09/10/2002, T-360/00, UltraPlus, EU:T:2002:244, § 43).

Apart from the references the applicant has made, the Office highlights that 'According to established case-law, only a mark which departs significantly from the norm or customs of the sector and thereby fulfils its essential function of indicating origin is not devoid of any distinctive character for the purposes of Article 7(1)(b) [EUTMR]' (12/01/2006, C-173/04 P, Standbeutel, EU:C:2006:20, § 31)

2. Following the practice of the Office, based on the established case law, stated in its Trade Mark Guidelines, Part B Examination, Section 4 Absolute grounds for refusal, Chapter 3 Non-distinctive trade marks (Article 7(1)(b) EUTMR), 6 Simple figurative elements:

Simple geometric devices such as circles, lines, rectangles or common pentagons are unable to convey any message that can be remembered by consumers and will accordingly not be seen by them as a trade mark.

As set out by the Court, an extremely simple sign, composed of a basic geometric figure such as a circle, a line, a rectangle or a pentagon is not capable, as such, of conveying a message that consumers can remember, with the result that they will not consider it as a trade mark (12/09/2007, [T-304/05](#), Pentagon, EU:T:2007:271, § 22).

The same applies for their combination if the sign, as a whole, does not possess any characteristics which would endow it with distinctive character; if it does not depart

from the practices of the relevant market and would not make the relevant consumers remember it.

There must also be certain characteristics of the sign that can be easily and instantly memorised by the relevant public and would make it possible for that sign to be perceived immediately as an indication of the commercial origin of the goods at issue (05/04/2017, T-291/16, Device of two drawn lines (fig.), EU:T:2017:253, § 31).

3. Since the trade mark at issue is made up of several components, it must be considered as a whole when its distinctive character is assessed. However, consideration as a whole is not incompatible with examination of each of the trade mark's individual components in turn (19/09/2001, T-118/00, Tabs (3D), EU:T:2001:226, § 59).

While the Office did examine the individual components of the trade mark, it also established the assessment of the sign as a whole, as it would be perceived by the relevant public, namely an elongated black square on a line. The relevant general consumer of different cosmetics, cleaning and beauty care preparations, diverse perfumery, false eyelashes and nails, abrasives, polishing and bleaching preparations in Class 3 would perceive it as simple figurative element that is *prima facie* incapable of transmitting a trade mark message. Taken as a whole, this is a simple figurative sign, and none of the elements have any unusual features in themselves.

The sign does not incorporate any additional word or figurative element that could give it a minimum degree of distinctive character. The Office considers the sign is not striking, not distinctive as a whole and incapable of being memorised by the relevant public and therefore being able to distinguish the goods from one undertaking from those of others. While a specific level of creativity or imaginativeness is not a prerequisite, the overall impression here is that of a mere combination of an elongated black square and a line.

The concept of quiet luxury does not make reference only to the design of logos, but encompasses high-quality materials, superior elaboration and muted branding over overt logos or seasonal trends and fast fashion. Therefore, the sign as a whole still has to possess a minimal distinctive character in relation to the goods for which protection is sought, which is not the case here.

4. Established case-law states that 'decisions concerning registration of a sign as a European Union trade mark ... are adopted in the exercise of circumscribed powers and are not a matter of discretion'. Accordingly, the registrability of a sign as an EUTM must be assessed solely on the basis of the EUTMR, as interpreted by the EU judicature, and not on the basis of previous Office practice (15/09/2005, C-37/03 P, BioID, EU:C:2005:547, § 47; 09/10/2002, T-36/01, Glass Pattern, EU:T:2002:245, § 35).

Furthermore, market practices, EUTMR and case-law, and therefore, examination practices evolve over time and some of the marks cited, like in the Case R 1953/2014-2 and R 235/2013-2 may, therefore, have been accepted as they were considered to be registrable at the time of application, though that may not be the case nowadays. Both decisions were taken before the entry into force of the current EUTMR and the market reality, the Office's practice and case-law evolved since then.

Moreover, both decisions, R 1953/2014-2 and R 235/2013-2, are not directly comparable with the current application as the marks concerned depart significantly from the one examined. They cover other goods than those for which protection is sought in the present case. Therefore, the relevant markets and consumers concerned are different and no analogy with the present case can be established.

Finally, the case R 207/2022-2 quoted by the applicant is also not directly comparable to the current application as the mark in it departs significantly from the one examined, as it is composed of a circle and a semicircle. In that case, the sign was considered by the Board of Appeal as relatively simple, but a certain morphological link could be established between the two figures, as the second figure represents the first, but only in the lower half. It is not the case in the examined sign.

5. The Court has confirmed that it is not up to the Office to show that other similar signs are used on the market:

[W]here the Board of Appeal finds that the trade mark sought is devoid of intrinsic distinctive character, it may base its analysis on facts arising from practical experience generally acquired from the marketing of general consumer goods which are likely to be known by anyone and are in particular known by the consumers of those goods ... In such a case, the Board of Appeal is not obliged to give examples of such practical experience.

(15/03/2006, T-129/04, Plastikflaschenform, EU:T:2006:84, § 19).

It is on the basis of such acquired experience that the Office submits that the relevant consumers would perceive the sign applied for as non-distinctive and not as the trade mark of a particular proprietor. Since, despite the Office's analysis based on such experience, the applicant claims that the trade mark applied for is distinctive, it is up to the applicant to provide specific and substantiated information to show that the trade mark applied for has distinctive character, either intrinsically or acquired through use; it is much better placed to do so, given its thorough knowledge of the market (05/03/2003, T-194/01, Soap device, EU:T:2003:53, § 48).

In support of its argument that the trade mark applied for has distinctive character in the relevant market sector, the applicant claims that there is previous case law concerning marks containing basic shapes. However, the Office considers that these arguments are not sufficient to disprove the Office's analysis because, as already indicated above, the cited case law is not relevant for this case.

Moreover, the applicant has not provided any specific and substantiated information and/or evidence showing that the trade mark applied for has distinctive character in the relevant market sector that could disprove the Office's analysis, which is based on facts arising from practical experience generally acquired from the marketing of the goods and services concerned.

6. As regards the national decisions referred to by the applicant, according to case-law:

the European Union trade mark regime is an autonomous system with its own set of objectives and rules peculiar to it; it is self-sufficient and applies independently of any national system ... Consequently, the registrability of a sign as a European Union trade mark must be assessed

by reference only to the relevant Union rules. Accordingly, the Office and, if appropriate, the Union judicature are not bound by a decision given in a Member State, or indeed a third country, that the sign in question is registrable as a national mark. That is so even if such a decision was adopted under national legislation harmonised with Directive 89/104 or in a country belonging to the linguistic area in which the word sign in question originated.

(27/02/2002, T-106/00, Streamserve, EU:T:2002:43, § 47).

Therefore, when assessing the case, the Office is not bound by the national decisions referred to by the applicant. Moreover, all of them are from countries not being part of the European Union.

7. As the applicant included a subsidiary claim for acquired distinctiveness through use, the present decision concerns only the inherent distinctive character of the mark for which protection is sought. Once it becomes final, the Office will resume examination of the subsidiary claim based upon Article 7(3) EUTMR.

IV. Conclusion

For the abovementioned reasons, and pursuant to Article 7(1)(b) EUTMR the application for EUTM No 019172020 is declared to be non-distinctive in the territory of the European Union for all the goods claimed.

According to Article 66(2) EUTMR, you have a right to appeal against this decision which does not terminate the examination proceedings. According to Article 68 EUTMR, notice of appeal must be filed in writing at the Office within two months of the date of notification of this decision. It must be filed in the language of the proceedings in which the decision subject to appeal was taken. Furthermore, a written statement of the grounds for appeal must be filed within four months of the same date. The notice of appeal will be deemed to have been filed only when the appeal fee of EUR 720 has been paid.

Once this decision has become final, the proceedings will be resumed for the examination of the subsidiary claim based upon Article 7(3) EUTMR and Article 2(2) EUTMR.



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