

EU Court Rules Cannabis Trademark Unregistrable as Contrary to Public Policy

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The General Court of the European Union ruled on [December 12](#) that the Cannabis Store Amsterdam logo was unregistrable as violative of public policy and morality because it would encourage illegal activity. This decision is significant because the court viewed the whole logo as offensive, despite that the goods claimed did not include any cannabis products and the image itself was not marijuana (which comes from the flower, not the leaf). In 2016, Santa Conte filed an application with the European Union Intellectual Property Office (EUIPO) to register the Cannabis Store Amsterdam trademark for various food and drink products. The EUIPO rejected the application because it claimed that it violated Articles 7(1) and 7(2) of the EU Trademark Regulation, which prohibit registration of trademarks that violate public policy and morality. Conte put forth various arguments in her defense, including that the goods and services claimed were not illegal, cannabis flowers (rather than leaves) create marijuana, and there is nothing objectionable about the words “Amsterdam” and “store.” But the EUIPO and the General Court were not persuaded by these arguments. The main thrust of their approach was that the cannabis leaves are a “media symbol” that the public understands as meaning cannabis with higher levels of the psychoactive ingredient THC, and the words “Amsterdam” and “store” connote the famous Amsterdam “coffee shops” that sell marijuana. Thus, although the whole logo, if taken literally, would not encourage illegal activity, the hidden message of the logo would indicate that the underlying goods and services involve narcotic substances. The decision emphasized the Board of Appeal’s conclusion that the leaf graphic in the mark is often used as a media symbol to communicate the psychoactive properties of marijuana and is recognized by a significant portion of the relevant public as such. The incorporation of the literal elements “store” and “Amsterdam” into the mark was cited as a basis for finding that the mark conveyed an association with marijuana products famously sold by Amsterdam’s “coffee shops,” and the presence of this potential meaning was a sufficient basis for refusing the application. In short, the decision maintained that the relevant public would associate the mark with narcotic substances and would therefore expect that the underlying goods and services are narcotic. Conte's reference to common uses of cannabis for lawful purposes was not accepted because, although

cannabis laws of certain member states have recently been evolving, there are many countries of the EU where products derived from cannabis and containing more than 0.2% THC remain illegal. The decision pointed to such legislation as reason for finding that there is currently no unanimous approach to the legality of cannabis products in the EU and cited further support for refusing the application based on certain “public policy” concerns (i.e., that the prohibition and policing of marijuana products in member states, where prohibited, meets public health objectives that correspond to certain member states’ systems of values). Moreover, the decision referenced Article 38 of the Treaty on the Functioning of the European Union, a provision that cites illicit drug trafficking as an area of serious crime with cross-border dimensions, and therefore an area in which the EU legislature is permitted to intervene. Of course, this decision is controversial since concepts of “public policy” and “morality” are very subjective. Specifically, “public policy” prohibitions are described by Article 7(1) as those that may contradict basic principles and values of the European political and social order, while “morality” is specified by Article 7(2) as content that would be perceived by a significant part of the relevant public as “going directly against the basic moral norms of society.” Presumably, as the patchwork quilt of EU members states’ regulations on cannabis (hemp or marijuana) achieve further harmonization, an appeal concerning a mark such as the one at issue here may be decided very differently in 10 years’ time. For now, however, it appears that future applications similar to the one at issue here are likely to meet similar refusals if their figurative or literal elements convey that the underlying goods and services contain the THC content that remains illegal in a majority of EU member states.

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