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Green Trademarks Under Fire: A Necessary Sacrifice in the Fight Against Greenwashing?

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Green trademarks are facing unprecedented scrutiny as 2024 draws to a close.

In light of the EUIPO's latest decisions, it has become increasingly clear that the Office is taking a more rigorous approach when it comes to green trademarks, i.e. trademarks "*containing at least one term in their goods and services description that is related to the protection of the environment and to sustainable development.*"

Indeed, in November 2024, the EUIPO rejected three applications for the following word marks:

- 'ESGDATABOARD' for goods and services in class 9, 35, 38, 41, and 42 ([Decision of November 12, 2024, regarding Application No. 01905904](#))
- 'ECOFLOW' for goods in class 11 ([Decision of November 18, 2024, regarding Application No. 018984049](#))
- 'We enable a neutral carbon world' for goods in class 1 ([Decision of November 18, 2024, regarding International Registration No. 1799967](#))

These three applications were rejected on the grounds of Article 7(1)(b) [EUTMR](#), which states that "*trade marks which are devoid of any distinctive character*" are not to be registered.

The rejection of the application "We enable a neutral carbon world" does not require extensive discussion, as this sign clearly constitutes a slogan and will therefore not be perceived as a trademark by the public.

However, the rejection of the signs "ESGDATABOARD" and "ECOFLOW" is more debatable, as the references to sustainability – namely, "ESG" and "ECO" – are juxtaposed without a space to another word – respectively "DATABOARD" and "FLOW." Due to the specificity of the combined terms, it is not unreasonable to think that the combination of these words creates a distinctive expression. This is especially true for the decision regarding the "ESGDATABOARD" sign, where the examiners concede the "*absence of explicit dictionary entries mentioning the word 'DATABOARD'.*"

Not only are these decisions not straightforward, but they may also seem to lack consistency with the EUIPO's previous decisions. Indeed, as the applicant points out in the "ESGDATABOARD" decision, the refusal they face is inconsistent with the EUIPO's prior tolerance towards signs

containing the term “ESG.” The Office attempts – albeit in a rather unconvincing manner – to extricate itself from this inconsistency by reminding that the registrability of a sign must not be assessed based on previous office practice.

All in all, these three decisions seem to indicate a shift towards a more stringent approach by the EUIPO regarding green trademarks. What could be the reason behind this new trend?

The rationale behind this new doctrine is not explicitly stated in these decisions. However, the intention behind the examiners’ approach is far from cryptic. There is little doubt that this increased severity stems from greater attention to greenwashing. In this sense, the EUIPO’s new approach deserves recognition. This is all the more so as it aligns with the essence of trademark law. Indeed, any reference to sustainability is – more or less subtly – intended to inform the public about the product or service’s quality—specifically, that it is environmentally friendly. And a trademark is not meant to serve as an indicator of quality.

Though this heightened severity from the Office’s examiners is commendable, it inevitably gives rise to the question of the conditions under which a word mark referencing sustainability might be registered by the Office. Are we heading towards a *de facto* prohibition of green trademarks?

Rather than *de facto* prohibiting green trademarks, should the focus not be on combating greenwashing? Perhaps it would be worth considering equipping the Offices with tools allowing them to distinguish between trademarks that are merely green in name and those genuinely committed to sustainability. To date, trademark law is powerless and therefore unable to make such a crucial distinction. In the face of this glaring gap in trademark law, initiatives are multiplying in other areas of law, such as financial law, where the [name of investment funds is now regulated to fight greenwashing](#).

The EUIPO has set green trademarks under fire in response to greenwashing. It might have been wise to remember that, when it comes to protecting what is green, fire is rarely a good ally.

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