

**EN**

**PRACTICE PAPER**

**TRADE MARKS CONTRARY TO PUBLIC  
POLICY OR TO ACCEPTED PRINCIPLES  
OF MORALITY**

**INTELLECTUAL PROPERTY OFFICE  
OF  
THE REPUBLIC OF SERBIA**

**Note from the IP Office:**

*This Practice Paper has been prepared in line with the Common Communication resulting of the Common Practice of Trade Marks developed by the European Union Intellectual Property Network (EUIPN) and aimed to provide an understanding on the concepts of public policy and accepted principles of morality, clarifying the relationship and the differences between these two concepts. In addition, it establishes criteria for the assessment of whether a sign is contrary to public policy and/or to accepted principles of morality and provides illustrative examples of the criteria and the groups of signs identified.*

*This Practice Paper, adopted at national level, is made public with the purpose of further increasing transparency, legal certainty, and predictability for the benefit of examiners and users alike.*

## 1. BACKGROUND

This Practice provides an understanding on the concepts of public policy and accepted principles of morality, clarifying the relationship and the differences between these two concepts. In addition, it establishes criteria for the assessment of whether a sign is contrary to public policy and/or to accepted principles of morality and provides illustrative examples of the criteria and the groups of signs identified.

The Practice is made public through this Practice Paper with the purpose of further increasing transparency, legal certainty and predictability for the benefit of examiners and users alike.

The Practice Paper delivers a set of principles on how to assess public policy and accepted principles of morality in trade mark applications. The specific issues that are in and out of the scope of the Practice are detailed in section 1.3 as well as a table with general considerations that should be borne in mind while reading the document. A summary of such general considerations can be found below:

- All applications should be assessed on a **case-by-case basis** considering the normal level of sensitivity and tolerance of the relevant public in the jurisdiction as well as all the circumstances specific to Serbia and the particular case.
- In cases where a sign is contrary to **both public policy and accepted principles of morality**, the criteria applicable to each will apply.
- **Freedom of expression** must be taken into account. However, this Practice Paper does not analyse how the assessment should be performed. The appendix on legal source materials dealing with freedom of expression is available for information purposes only.
- The assessment of Article 4(1)(f) TMD may have a **subjective** element. As such, this article should be applied by examiners providing an objective statement of reasons, where possible, drawing on independent, reliable sources, to support their decisions.
- The **examples** provided in the Practice Paper are only shown for the purposes of the assessment of Article 4(1)(f) TMD. The fact that some of them would be acceptable under this provision does not mean they could not be refused based on other grounds for refusal. All examples are in English, and it will be assumed that they will be understood as a native English speaker would understand them.

Furthermore, it is noted that the examples in the document are for illustrative purposes only. They should be understood as demonstrating the applicability of certain principles of the Practice Paper when applied in relation to a relevant public with a certain level of sensitivity and tolerance and not as imposing conclusions on what is contrary to public policy or accepted principles of morality at national level. They should always be considered in connection with the respective group and principle being referred to, bearing in mind the general considerations mentioned above.

## 2. THE PRACTICE

The following text summarises the key messages and the main statements of the principles of the Practice.

# PRINCIPLES OF THE PRACTICE

## UNDERSTANDINGS

### ***Understandings of public policy and accepted principles of morality***

The first section of the Practice outlines the understandings of public policy and accepted principles of morality.

**Public policy** can be understood as *a set of fundamental norms, principles and values of societies in Serbia and the European Union at a given point in time. It includes, in particular, the universal values of Serbia and the European Union, such as human dignity, freedom, equality and solidarity, and the principles of democracy and the rule of law, as proclaimed in the Charter of Fundamental Rights of the European Union (CFREU). Its content should be ascertainable from reliable and objective sources.* For further guidance, this subsection contains non-exhaustive lists of: (1) topics that fall within the scope of the fundamental norms; (2) fundamental principles and values of Serbia and that are common to all the EU Member States; and (3) examples of reliable and objective sources from which the fundamental norms, principles and values that form the public policy of Serbia and the EU or an EU Member State (MS) should be ascertainable.

**Accepted principles of morality** refer to *the fundamental moral values and standards accepted by a society in Serbia and the European Union at a given time.* The subsection explains that the identification of such values and standards requires at least some empirical assessment of what the relevant society (the public in question) considers, at a given point in time, to be acceptable norms of conduct. Religious, cultural, and social moral standards and values are highlighted.

## ASSESSMENT OF SIGNS CONTRARY TO PUBLIC POLICY AND/OR TO ACCEPTED PRINCIPLES OF MORALITY

### ***Potential scenarios; Relevant date for the assessment; Criteria and factors***

This section sets out general rules for the assessment of signs contrary to public policy and/or to accepted principles of morality.

The first subsection covers potential scenarios where signs will, in principle, be found contrary to public policy or to accepted principles of morality. It differentiates between the concepts of morality and bad taste, clarifying that it is not sufficient for the sign concerned to be regarded as being in bad taste to come within the scope of Article 4(1)(f) TMD.

The second subsection provides guidance as to the relevant point in time for determining whether a sign is contrary to public policy and/or to accepted principles of morality, which in principle must be based on the public policy in force and/or the fundamental moral values and standards accepted at the time of filing of the trade mark application.

The last subsection states that while the examination of whether a sign is contrary to public policy is based on objective criteria, the examination of whether a sign is contrary to accepted principles of morality is based on subjective values that have to be applied as objectively as possible. It also describes criteria and factors to be taken into account in the assessment.

- (1) Assessment of the sign itself. This part is focused on the assessment of the meaning(s) of the sign itself, without considering the goods and/or services applied for. Principles and guidance are provided

on the identification and analysis of the possible meanings of the sign, the assessment of the additional verbal and/or figurative elements that might influence the meaning of the sign, misspelling or unusual variation in syntax, and transformation of the meaning of the sign.

- (2) Assessment of the relationship between the goods and services and the sign / relevant public. This part explains that the perception of a sign by the relevant public must be considered during the assessment, and to that end, the goods and services applied for must be analysed, since they serve to identify both the relevant public and its perception of the sign. Information is then provided on key principles related to the relevant public and its perception, including some elements that may have an impact.
- (3) For public policy – determination of the reliable and objective sources from which public policy can be ascertained.
- (4) For accepted principles of morality – identification of the applicable fundamental moral values and standards.

Illustrative examples are included, which are only shown for the purposes of the assessment of Article 4(1)(f) TMD.

#### OVERLAP BETWEEN PUBLIC POLICY AND ACCEPTED PRINCIPLES OF MORALITY

This section tackles the overlap between public policy and accepted principles of morality, namely cases in which an objection can be raised simultaneously on both concepts. In addition, it identifies some scenarios where the registration of a sign could be considered contrary to both public policy and accepted principles of morality, namely, signs related to: human rights; illegal substances, which target vulnerable groups; religion; and criminal activities/organisations. In these scenarios, relevant fundamental norms, principles and values of Serbia and the EU or the EU Member States, in the context of public policy, and fundamental moral values and standards of the Serbian society and any EU society, in the context of accepted principles of morality, are highlighted.

#### FREEDOM OF EXPRESSION

This section, in line with Serbia and the EU case-law, establishes that freedom of expression must be considered when analysing whether a sign is contrary to Article 4(1)(f) TMD. It indicates that the impact of this principle on the assessment of Article 4(1)(f) TMD is currently not settled in Serbia or the EU trade mark law. It refers to the appendix for further information regarding 'potentially relevant legal sources' for the application of Article 10 European Convention on Human Rights (ECHR) and Article 11 CFREU.

#### SIGNS THAT COULD FALL UNDER ARTICLE 4(1)(F) TMD

**Signs including/related to (1) illicit substances; (2) public safety risks; (3) a religious or sacred nexus; (4) vulgar elements (swear words, offensive gestures, etc.); (5) obscenity, sexuality and innuendo; (6) signs disparaging or slurring a particular group; (7) criminal activities, crimes against humanity, racist and totalitarian and extremist regimes, organisations and movements; (8) well-known tragic events; (9) historical figures, national/EU symbols and/or personalities held in high esteem.**

To facilitate the assessment of Article 4(1)(f) TMD, this extensive section includes a non-exhaustive list of groups of signs that could fall under this ground for refusal. The introductory part of the section explains, inter alia, that the list provided does not imply that a sign could not fall under more than one group. In addition, several disclaimers that are generally applicable to this ground for refusal are recalled in this section, as well as the need to bear in mind the general considerations included in section 1.3, in particular the final consideration on examples.

Each of the subsections covers a group of signs and contains (1) a non-exhaustive description of the types of signs comprised in the group, (2) a set of principles related to said group, and (3) examples that illustrate the principles. Each example contained in this section consists of a sign, the goods or services to which it refers, the outcome expected considering all the assumptions (objectionable or non-objectionable under Article 4(1)(f) TMD), and the reasoning behind the outcome.

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# 1 INTRODUCTION

## 1.1 Objective of this Practice Paper

This Practice Paper establishes general principles on the assessment of signs contrary to public policy or to accepted principles of morality, in particular, the understanding of these concepts, their relationship, the criteria for their assessment, together with examples of signs that could be considered contrary to public policy and/or to accepted principles of morality. It serves as a reference for the Intellectual Property Office (IPO) of the Republic of Serbia, User Associations (UAs), as well as applicants and their representatives.

It is made widely available and will be easily accessible, providing a clear and comprehensive explanation of the principles on which the Practice is based. These principles are designed to be generally applied and aim to cover the large majority of cases. It must be noted that **the assessment of whether a sign is contrary to public policy and/or to accepted principles of morality will always be carried out on a case-by-case basis – since these are intricately linked to the norms and values that prevail in the society at a given time.**

Furthermore, the examples in this document aim to illustrate the principles of the Practice. These examples should be viewed in connection with the principles and based on the assumptions on which they rest and should also be understood as demonstrating certain principles of the Practice, rather than as imposing conclusions on what is contrary to public policy or accepted principles of morality at national level.

## 1.2 Background

### *Trade marks contrary to public policy or to accepted principles of morality*

Article 4(1)(f) TMD provides a ground for refusal or invalidity of trade marks that are contrary to public policy or to accepted principles of morality. However, the wording of Article 4(1)(f) TMD is quite broad and is subject to interpretation, since it does not contain a definition of what should be understood as ‘public policy’ or ‘accepted principles of morality’, nor does it clarify the relationship between the two concepts.

Whilst EU case-law had provided some guidance on the matter <sup>(1)</sup>, there [is/was still] uncertainty on decisive aspects of the assessment of the provision, such as the relationship and differences between the two concepts, whether and in which cases they may overlap, and the criteria that should be taken into consideration in the assessment.

## 1.3 Practice scope

This Practice delivers the understandings of the notions of public policy and accepted principles of morality; a set of principles on the assessment of Article 4(1)(f) TMD and the applicable criteria for such assessment; and illustrative examples to demonstrate the applicable criteria.

The following issues are **in scope** of the Practice:

- understandings of the concepts of public policy and accepted principles of morality and of other concepts related to their assessment (e.g. clarification of the relationship and differences between the concepts, of whether and in which cases the concepts should be examined independently or in conjunction with each other, delimitation between the concept of accepted principles of morality and the concept of bad taste);
- assessment of whether a sign is contrary to public policy and/or to accepted principles of morality, and on their interpretation and application (e.g. assessment of the sign itself, the goods/services covered by the

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<sup>(1)</sup> 27/02/2020, C-240/18 P, Fack Ju Göhte, EU:C:2020:118 and Opinion of Advocate General Bobek, delivered on 2 July 2019 in case 27/02/2020, C-240/18 P, Fack Ju Göhte, EU:C:2020:118.

application, identification and clarification of the relevant public, contexts and circumstances influencing the perception of the sign); and

- illustrative examples of the criteria and the groups of signs identified.

The following issues are **out of scope** of the Practice:

- what is seen or should be seen as lawful in the country;
- assessment of other intellectual property rights and their impact on the registrability of a trade mark according to Article 4(1)(f) TMD;
- how the assessment of freedom of expression in relation to Article 4(1)(f) TMD should be performed (however, freedom of expression must be taken into account when analysing whether a sign is contrary to Article 4(1)(f) TMD);
- procedural aspects pertaining to the IPO, such as ex officio examination and cancellation proceedings, etc.;
- language-related issues regarding the examples that might be used in the Practice document (i.e. all examples are in English, and it will be assumed that they will be understood as a native English speaker would understand them); and
- cultural heritage in the context of Article 4(1)(f) TMD <sup>(2)</sup>.

<b>General considerations</b>	
<b>Case-by-case assessment</b>	While the principles outlined below may provide guidance in the assessment of decisions, all applications should be assessed <b>on a case-by-case basis</b> considering the normal level of sensitivity and tolerance of the relevant public in the jurisdiction as well as all the circumstances specific to Serbia or an EU Member State and the particular case.
<b>Overlap between public policy and accepted principles of morality</b>	In cases where a sign is contrary to both public policy and accepted principles of morality, the criteria applicable to each will apply.
<b>Freedom of expression</b>	In line with EU case-law, freedom of expression <b>must be taken into account</b> when analysing whether a sign is contrary to Article 4(1)(f) TMD. Nevertheless, the fact that a sign is refused registration does not prevent its use in trade. As the impact of freedom of expression on the assessment of Article 4(1)(f) TMD is currently not settled in [country] or the EU trade mark law, this Practice document does not analyse how the assessment should be performed. The appendix on legal source materials dealing with freedom of expression is attached for information purposes only.
<b>Subjectivity</b>	Despite the guidance provided by the principles agreed below, the assessment of Article 4(1)(f) TMD may have a subjective element. As such, this article should be applied by examiners providing an objective statement of reasons, where possible, drawing on independent, reliable sources, to support their decisions.
<b>Examples</b>	The examples provided herein are only shown for the purposes of the assessment of Article 4(1)(f) TMD. The fact that some of them would be acceptable under this provision does not mean they could not be refused based on other grounds for refusal (e.g. non-distinctiveness, descriptiveness). Although some terms may be recognised in several languages, all examples are in English, and it will be assumed that they will be <b>understood as a native English speaker would understand them</b> .

<sup>(2)</sup> Due to the lack of guidance from the Court of Justice of the European Union, it has been considered necessary to leave this topic out of the scope of the project.

## 2 THE PRACTICE

According to Article 4(1)(f) TMD, trade marks which are contrary to public policy or to accepted principles of morality shall not be registered or, if registered, shall be liable to be declared invalid. Whereas other absolute grounds for refusal have, in principle, largely commercial underpinnings, public policy and morality protect or uphold more basic principles and fundamental values as set out below. Additionally, the purpose of this ground for refusal is not to identify and filter out signs whose use in commerce must at all costs be prevented; rather, the rationale of the provision is that the benefits of trade mark registration should not be granted in favour of signs that are contrary to public policy and/or the accepted principles of morality recognised in Serbia. The organs of government and public administration may not confer official status, and thus, should prevent the legitimisation in society of signs that offend against certain basic values of any democratic society. However, the fact that a sign is refused under Article 4(1)(f) TMD does not prevent its use.

It is important to note that, if the application is refused based on the grounds of Article 4(1)(f) TMD, it will not be possible to overcome the refusal through acquired distinctiveness as a consequence of use of the trade mark (Article 4(4) TMD). However, any such prior use must be taken into account when assessing the relevant public's perception of the sign, including how that use may have influenced that perception <sup>(3)</sup>.

Furthermore, the question of whether a trade mark can be registered under Article 4(1)(f) TMD is separate from the question of whether offering or use of the goods and/or services for which that sign is registered is legal in Serbia. Therefore, it is the trade mark itself, namely the sign in relation to the goods or services as they appear in the trade mark application, which is to be assessed to determine whether it is contrary to public policy or accepted principles of morality <sup>(4)</sup>.

### 2.1 Understandings

#### 2.1.1 Understanding of public policy <sup>(5)</sup>

**Public policy can be understood as a set of fundamental norms, principles and values of societies in Serbia at a given point in time. It includes, in particular, the universal values of Serbia, such as human dignity, freedom, equality and solidarity, and the principles of democracy and the rule of law, as proclaimed in the Charter of Fundamental Rights of the European Union (CFREU). Its content should be ascertainable from reliable and objective sources.**

Below is a non-exhaustive list of topics that fall within the scope of the **fundamental norms**.

- Foreign and security policy <sup>(6)</sup>: norms aimed at, inter alia, preserving peace, combating terrorism, the rule of law, and developing and consolidating democracy.
- Health policy <sup>(7)</sup>: norms aimed at, inter alia, protecting and improving the health of Serbian citizens and equipping Serbia to better prevent and address serious health threats.
- Humanitarian aid and civil protection <sup>(8)</sup>: norms aimed at providing assistance when major disasters or humanitarian emergencies occur.

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<sup>(3)</sup> See to that effect 27/02/2020, C-240/18 P, Fack Ju Göhte, EU:C:2020:118, § 51

<sup>(4)</sup> 13/09/2005, T-140/02, Intertops, EU:T:2005:312, § 27.

<sup>(5)</sup> The term 'public policy' corresponds to the wording included in the English version of Article 4(1)(f) TMD. However, the legislation of some Member States uses different words to refer to the same concept when transposing such provision (e.g. public order, *ordre public*, etc.). When translating this document, the term 'public policy' should be understood and translated as per the wording included in the Member States' national legislation when referring to the equivalent of Article 4(1)(f) TMD.

<sup>(6)</sup> [https://europa.eu/european-union/topics/foreign-security-policy\\_en](https://europa.eu/european-union/topics/foreign-security-policy_en)

<sup>(7)</sup> [https://europa.eu/european-union/topics/health\\_en](https://europa.eu/european-union/topics/health_en)

<sup>(8)</sup> [https://european-union.europa.eu/priorities-and-actions/actions-topic/humanitarian-aid-and-civil-protection\\_en](https://european-union.europa.eu/priorities-and-actions/actions-topic/humanitarian-aid-and-civil-protection_en)

- Promotion and protection of human rights, fundamental freedoms and justice <sup>(9)</sup>: norms aimed at ensuring that a Serbian citizen enjoys the same fundamental rights based on the values of equality, non-discrimination, inclusion, human dignity, freedom and democracy, which are protected by the rule of law – inter alia, promoting and protecting the rights of women, children, minorities and displaced persons; defending human rights through active partnership, defending social and cultural rights, etc.

Moreover, this understanding provides, but is not limited to, a list of fundamental **principles and values** <sup>(10)</sup> in a society in which inclusion, tolerance, justice, solidarity, and non-discrimination prevail, on the basis of, inter alia, sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, opinion, birth, disability, age or sexual orientation. These fundamental values and principles are <sup>(11)</sup>:

- human dignity,
- freedom,
- equality,
- solidarity,
- democracy,
- rule of law,
- respect of human rights, including the rights of persons belonging to minorities.

**The requirements of public policy evolve over time, depending on the specific needs of the society. Serbia remains essentially free to determine the content of those requirements in accordance with its national needs and international obligations** <sup>(12)</sup> <sup>(13)</sup>.

Finally, the fundamental norms, principles and values that form the public policy of Serbia **be ascertainable from reliable and objective sources**, such as the ones included in the following non-exhaustive list <sup>(14)</sup>:

- general principles of law,
- international treaties and conventions,
- EU treaties,
- EU legislation,
- EU case-law,
- applicable Serbian legislation,
- Serbia' case-law.

### 2.1.2 Understanding of accepted principles of morality

**Accepted principles of morality refer to the fundamental moral values and standards accepted by the**

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<sup>(9)</sup> [https://european-union.europa.eu/priorities-and-actions/actions-topic/human-rights-and-democracy\\_en](https://european-union.europa.eu/priorities-and-actions/actions-topic/human-rights-and-democracy_en) and [https://european-union.europa.eu/priorities-and-actions/actions-topic/justice-and-fundamental-rights\\_en](https://european-union.europa.eu/priorities-and-actions/actions-topic/justice-and-fundamental-rights_en)

<sup>(10)</sup> The different versions of the EU Treaties use the notions of 'values' and 'principles' interchangeably to refer to the values and principles mentioned in this section (e.g. the Treaty of Amsterdam and the Treaty of Maastricht mention that 'the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States'). Therefore, for the sake of clarity, they are developed jointly.

<sup>(11)</sup> These values and principles are laid down in the [CFREU](#) and in the [Treaty of Lisbon](#) amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007.

<sup>(12)</sup> 12/05/2021, T-178/20, Bavaria Weed (fig.), EU:T:2021:259, § 40.

<sup>(13)</sup> According to Article 4(3) TMD: 'Any Member State may provide that a trade mark is not to be registered or, if registered, is liable to be declared invalid where and to the extent that: (a) the use of that trade mark may be prohibited pursuant to provisions of law other than trade mark law of the Member State concerned or of the Union'.

<sup>(14)</sup> Section 2.2.3 further develops the sources that must be considered and other sources that may, if appropriate, be considered.

*Serbian society at a given time.*

The identification of the **applicable fundamental moral values and standards requires at least some empirical assessment of what the society (the public in question) considers, at a given point in time, to be acceptable norms of conduct** <sup>(15)</sup>, especially because they change over time.

Given that moral values and standards are influenced by, inter alia, the beliefs, cultural background, and social network of a society, the following are highlighted:

- **Religious values and standards:** those that reflect the beliefs and practice of a religious group, such as the respect given to a particular religious doctrine, the worshippers of that religion, the ceremonies attached to that religion, sacred text(s), sacred symbols, etc.
- **Cultural values and standards:** those that reflect the tradition of a culture and of the people forming it, such as the respect and protection of the customs and traditions, rituals/ceremonies, cultural symbols or language of a particular group, etc.
- **Social values and standards:** those that reflect the identity of a community. Generally, these values originate from, inter alia, political, educational and community networks of a particular group, and would depend on the particular geographical and social context.

## **2.2 Assessment of signs contrary to public policy and/or to accepted principles of morality**

From the wording established in Article 4(1)(f) TMD, it can be concluded that this absolute ground includes two different concepts: trade marks contrary to public policy and trade marks contrary to accepted principles of morality. Whilst the concepts of public policy and accepted principles of morality may, in certain cases, overlap, the finding that a sign is only contrary to public policy or only contrary to accepted principles of morality is enough to refuse the sign on the basis of Article 4(1)(f) TMD. Nevertheless, where a sign is considered to be contrary to both public policy and accepted principles of morality, an assessment of both should be conducted. In this regard, the IPO decisions refusing a sign under Article 4(1)(f) TMD should clearly state the reasons on which they are based.

### *2.2.1 Potential scenarios*

**In principle, a sign will be contrary to public policy if, inter alia, it contravenes and/or incites, glorifies, trivialises or justifies the violation of a fundamental norm, principle and/or value, ascertained from any of the reliable and objective sources indicated in section 2.1.1.** Therefore, the sign must affect an interest that Serbia considers to be fundamental in accordance with its own systems of values <sup>(16)</sup>.

**In principle, a sign will be contrary to accepted principles of morality if, inter alia, any of the fundamental moral values and standards mentioned in section 2.1.2 are perceived to be insulted, disparaged, discriminated against, degraded, denigrated, or trivialised in a manner that causes offence.**

For the application of Article 4(1)(f) TMD, the sign must convey at least one meaning which is **clearly contrary to accepted principles of morality or to public policy.**

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<sup>(15)</sup> Opinion of Advocate General Bobek, 27/02/2020, C-240/18 P, Fack Ju Göhte, EU:C:2020:118, § 80.

<sup>(16)</sup> 12/12/2019, T-683/18, CANNABIS STORE AMSTERDAM (fig.), EU:T:2019:855, § 73. The decision refers to Article 7(1)(f) EUTMR, which corresponds to Article 4(1)(f) TMD.

### 2.2.1.1 *Bad taste*

Bad taste and morality are different concepts. As established by the Court of Justice, in order to come within the scope of Article 7(1)(f) EUTMR (equivalent to Article 4(1)(f) TMD), it is not sufficient for the sign concerned to be regarded as being in **bad taste**. It must be perceived by the relevant public as being contrary to the fundamental moral values and standards of society as they exist at that time <sup>(17)</sup>.

**A sign found to be in bad taste is one which is *gross, unrefined or indelicate but is not offensive to a person of normal sensitivity and tolerance*. Such signs will not constitute a breach of accepted principles of morality.**

### 2.2.2 *Relevant date for the assessment*

In principle, the assessment of whether a sign is contrary to public policy and/or to accepted principles of morality must be based on the public policy in force and/or the fundamental moral values and standards accepted **at the time of filing of the trade mark application** <sup>(18)</sup>. However, there may be very special circumstances in which the public policy in force and/or the fundamental moral values and standards accepted may be affected by an event that is dated subsequent to the filing, and in these cases, in principle, those events might also be taken into account <sup>(19)</sup>.

### 2.2.3 *Criteria and factors*

While the examination of whether a sign is contrary to **public policy** is based on **objective criteria** <sup>(20)</sup>, the examination of whether a sign is contrary to **accepted principles of morality** is based on **subjective values** that have to be **applied as objectively as possible** <sup>(21)</sup>. Nonetheless, both concepts should be examined taking into consideration the following criteria and factors.

- **Assessment of the sign itself**
  - Identification and analysis of the possible meanings of the sign
  - Assessment of the additional verbal and/or figurative elements that might influence the meaning of the sign
  - Misspelling or unusual variation in syntax
  - Transformation of the meaning of the sign
  
- **Assessment of the relationship between the goods and services and the sign / relevant public**
  - Analysis of the goods and services
  - Relevant public
    - Not limited to the target public
    - Standard of a reasonable person with average sensitivity and tolerance thresholds
    - Public interest regarding registration of offensive words
  - Relevant public's perception
    - Impact of the goods and/or services on the perception of the sign
    - The linguistic and geographical scope
    - Particular context and circumstances that may influence the perception of the sign

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<sup>(17)</sup> 27/02/2020, C-240/18 P, Fack Ju Göhte, EU:C:2020:118, § 41.

<sup>(18)</sup> 03/06/2009, T-189/07, Flugbörse, EU:T:2009:172; confirmed by 23/04/2010, C-332/09 P, Flugbörse, EU:C:2010:225.

<sup>(19)</sup> Such as the BIN LADIN case, EUIPO BoA R 176/2004-2: although the trade mark 'BIN LADIN' was applied for 4 months prior to the '9/11' terrorist attack, the events and circumstances arising during the course of the examination were taken into consideration.

<sup>(20)</sup> Opinion of Advocate General Bobek, delivered on 2 July 2019(1) in case 27/02/2020, C-240/18 P, Fack Ju Göhte, EU:C:2020:118, § 78.

<sup>(21)</sup> Opinion of Advocate General Bobek, delivered on 2 July 2019(1) in case 27/02/2020, C-240/18 P, Fack Ju Göhte, EU:C:2020:118, § 80.

- **For public policy: Determination of the reliable and objective sources from which public policy can be ascertained**
- **For accepted principles of morality: Identification of the applicable fundamental moral values and standards**

The following subsections develop the criteria and factors mentioned above and contain illustrative examples, which are only shown for the purposes of the assessment of Article 4(1)(f) TMD.

2.2.3.1 *Assessment of the sign itself*

This subsection is focused on the assessment of the meaning(s) of the sign itself, that is, the verbal and/or figurative elements, without considering the goods and/or services applied for <sup>(22)</sup>.

**a) Identification and analysis of the possible meanings of the sign**

It is necessary to assess the verbal element(s) and/or figurative element(s) and identify the possible meanings of the sign and/or the message conveyed by it in the languages understood in Serbia. Subsequently, an analysis of whether any of these possible meanings and nuances could be contrary to public policy or to accepted principles of morality should be carried out. For this purpose, all the uses that a particular word may have would be considered (formal, colloquial, slang, etc.).

The assessment of the possible meanings of the sign and/or the message conveyed by it could be corroborated by, inter alia, reliable dictionary entries, encyclopaedias, or examples of use of the term(s) (contained in the sign) found on internet websites. Such sources of reference would, in principle, provide a preliminary indication as to whether the sign could be contrary to public policy or to accepted principles of morality.

**If any one of these possible meanings is contrary to public policy or to accepted principles of morality, that meaning must be considered as part of the assessment of Article 4(1)(f) TMD.**

Meaning that should be considered for the assessment of Article 4(1)(f) TMD	
Sign	Reasoning
<b>SS</b>	<p>According to the Collins dictionary, the verbal element 'SS' could refer, inter alia, to an abbreviation for steamship or for Saints. However, 'SS' can also be recognised as the abbreviation for a military organisation within the Nazi party in World War II, which was declared a criminal organisation because of its direct involvement in committing war atrocities.</p> <p>A trade mark with such a meaning could be perceived as glorifying and/or trivialising Nazism and the organisation's criminal actions, which go against the indivisible, universal values on which the EU is founded, that is to say, human dignity, freedom, and physical integrity. <b>Therefore, this meaning should be taken into consideration for the assessment of Article 4(1)(f) TMD.</b></p>
<b>PUSSY</b>	<p>According to the Oxford dictionary, the verbal element 'PUSSY' could refer to a child's word for 'cat' or a slang word to refer to the female sexual organs.</p> <p>This sign could thus be perceived as offensive. <b>Therefore, this meaning should be taken into consideration for the assessment of Article 4(1)(f) TMD.</b></p>

**b) Assessment of the additional verbal and/or figurative elements that might influence the meaning of the sign**

<sup>(22)</sup> The aim of this point is to determine all the meanings of the sign and whether any of them are particularly relevant for the assessment of Article 4(1)(f) TMD. The goods and/or services in connection with the sign are analysed in the following subsection (2.2.3.2).

In the assessment of the sign it should be considered whether, aside from the identified element that may be contrary to public policy or accepted principles of morality, the sign contains other elements that might influence the meaning of the sign. There may be cases in which **additional verbal or figurative elements may eliminate and/or counteract the objectionable meaning** of the sign.

The combination of elements <u>eliminates and/or counteracts</u> the objectionable meaning of the sign	
Sign	Reasoning
 <p><b>LITTLE DICK</b></p>	<p>According to the Oxford dictionary, the verbal element 'DICK' is a slang vulgar term to refer to a man's penis. Nevertheless, 'Dick' is also a diminutive of the name Richard. <b>The combination of the verbal elements 'LITTLE DICK' and the figurative element of a naïve child eliminates the possible vulgar and offensive meaning, since it conveys the message that the sign refers to a little child known as Dick.</b></p>
 <p><b>PUSSY</b></p>	<p>According to the Oxford dictionary, the verbal element 'PUSSY' could refer to a child's word for 'cat' or a slang word to refer to the female sexual organs. <b>The combination of the verbal element with the figurative element of a cat's pawprint eliminates the vulgar and offensive meaning of the sign, since it conveys the message that the sign refers to a cat.</b></p>

On the other hand, there may be cases in which the **additional verbal or figurative elements reinforce the objectionable meaning** of the sign, in the sense that the sign and/or the message conveyed by it could be contrary to public policy or to accepted principles of morality.

The combination of elements <u>reinforces</u> the objectionable meaning of the sign	
Sign	Reasoning
 <p><b>LITTLE DICK</b></p>	<p>According to the Oxford dictionary, the verbal element 'DICK' is a vulgar slang term used to refer to a man's penis. 'Dick' is also a diminutive of the name Richard. <b>The combination of the verbal elements 'LITTLE DICK' with a depiction of a banana replacing the letter 'I' accentuates the vulgar and offensive meaning. Therefore, this meaning should be taken into consideration for the assessment of Article 4(1)(f) TMD.</b></p>
 <p><b>PUSSY</b></p>	<p>According to the Oxford dictionary, the verbal element 'PUSSY' could refer to a child's word for 'cat' or a slang word to refer to the female sexual organs. <b>The combination of the verbal element with the depiction of a woman's lips appears to refer to the sexual connotation of the term 'pussy', reinforcing the vulgar and offensive meaning. Therefore, this meaning should be taken into consideration for the assessment of Article 4(1)(f) TMD.</b></p>

c) Misspelling or unusual variation in syntax

A misspelling or unusual variation in syntax could also mitigate any immediate association with the **negative connotation of the sign**. This would not be the case, however, when, as a result of the misspelling or unusual variation, the **pronunciation of the sign is identical to the objectionable term or expression**.

Misspelling or unusual variation in the syntax	
Sign	Reasoning
<p><b>THERAPIST JOHN</b></p>	<p>The verbal elements of the sign refer to a therapist called John. Therefore, <b>the sign does not convey any offensive meaning to be considered under Article 4(1)(f) TMD.</b></p>
<p><b>THE.RAPIST JOHN</b></p>	<p>In contrast to the sign above, the introduction of a dot between the letters 'E' and 'R' creates a variation in the meaning of the sign by adding a reference to a rapist, that is, a criminal, called John. <b>Therefore, this meaning should be taken into consideration for the assessment of Article 4(1)(f) TMD.</b></p>

#### d) Transformation of the meaning of the sign

When performing the examination under public policy, it should also be considered **whether the verbal and/or figurative elements contained in the sign and/or the message conveyed by it have been transformed** to the point that they would no longer be contrary to public policy at the filing date of the trade mark application. With regard to accepted principles of morality, the examination should determine **whether the abovementioned elements of the sign have lost their offensive meaning over time**. This must in principle be determined with reference to the time of filing of the trade mark application.

Non-objectionable under Article 4(1)(f) TMD	
Sign	Reasoning
	<i>The jolly roger (a black flag with a picture of a skull and crossbones on it) was traditionally connected to pirates. Piracy is an act of robbery and/or criminal violence by ship upon another ship or a coastal area, which is a common problem and crime in many countries. However, today, the jolly roger is not used or connected to the abovementioned type of crimes, and, the sign is not perceived as glorifying and/or trivialising or justifying the serious harm done by pirates to the fundamental values of the EU, such as human dignity, safety and security. Therefore, the meaning of the figurative element contained in the sign has been to some extent transformed and should not be considered contrary to Article 4(1)(f) TMD.</i>

#### 2.2.3.2 Assessment of the relationship between the goods and services and the sign / relevant public

##### a) Analysis of the goods and services

The assessment of whether a sign is contrary to public policy or to accepted principles of morality must be carried out with reference to the perception of that sign by the relevant public <sup>(23)</sup>.

To that end, the goods and services applied for must be analysed, since they serve to identify both the relevant public and its perception of the sign.

In addition, the Court of Justice established that the examination under Article 4(1)(f) TMD must take into account, inter alia, the context in which the public is likely to encounter the trade mark <sup>(24)</sup>, by assuming its normal use.

##### b) Relevant public

- Not limited to the target public

For the purposes of Article 4(1)(f) TMD, the **relevant public is not necessarily limited to the public to which the goods and/or services in respect of which registration is sought are directly addressed, but also other persons who, without being concerned by those goods and/or services, might encounter that sign incidentally in their day-to-day lives** <sup>(25)</sup>.

Therefore, the assessment of the sign must be **based on the perception of the members of the public who are likely to encounter the trade mark wherever the goods and/or services might be found**.

<sup>(23)</sup> 20/09/2011, T-232/10 Coat of arms of the Soviet Union, EU:T:2011:498, § 50.

<sup>(24)</sup> 27/02/2020, C-240/18 P, Fack Ju Göhte, EU:C:2020:118, § 42.

<sup>(25)</sup> 05/10/2011, T-526/09, Paki, EU:T:2011:564, § 17-18 and 06/07/2006, EUIPO Grand Board R 495/2005-G, SCREW YOU, § 21 and 26.

- Standard of a reasonable person with average sensitivity and tolerance thresholds

The perception of the sign cannot be based on the part of the relevant public that does not find anything shocking, nor can it be based on the part of the public that may be very easily offended. Rather it must be based **on the standard of a reasonable person with average sensitivity and tolerance thresholds**. This means that it is not sufficient if a trade mark is only likely to offend a small minority of exceptionally puritanical citizens. On the contrary, a trade mark should not be allowed to be registered simply because it would not offend the equally small minority at the other end of the spectrum who find even gross obscenity acceptable. Some people are easily offended, while others are totally unshockable. Therefore, the assessment of whether a sign is contrary to accepted principles of morality must be carried out by reference to the standards and values of ordinary citizens who fall between those two extremes <sup>(26)</sup>.

- Public interest regarding registration of offensive words

The fact that many people do not find certain words offensive or have even adopted them into their everyday vocabulary does not alter the fact that these words could be perceived as offensive: there is a public interest in ensuring that registration is not granted to signs consisting of offensive words with which consumers, especially children and young people, may subsequently be confronted.

### c) Relevant public's perception

Once the goods and services and the relevant public have been identified, an assessment of how the relevant public will perceive the sign in relation to those goods and/or services will be performed. This perception might be impacted by the goods and/or services, the language of the sign, the particular context and circumstances of the Serbia, or any other relevant elements and/or factors specific to the individual case <sup>(27)</sup>.

For **public policy** the perception of the public refers to the understanding of the meaning of the sign by the relevant public, and not to the perception by the relevant public as to whether the sign is contrary to public policy.

- Impact of the goods and/or services on the perception of the sign

- Cases in which the goods and/or services are not relevant for the assessment.

In some cases, **the meaning of the sign, and/or the message conveyed by it is so strong that it would be rejected as contrary to public policy or to accepted principles of morality irrespective of the goods and/or services applied for** <sup>(28)</sup>.

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<sup>(26)</sup> 06/07/2006, EUIPO BoA R 495/2005-G, SCREW YOU, § 21.

<sup>(27)</sup> 27/02/2020, C-240/18 P, Fack Ju Göhte, EU:C:2020:118, § 40 and § 42-43.

<sup>(28)</sup> 05/10/2011, T-526/09, Paki, EU:T:2011:564, § 15.

Objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
	Class 25: Clothing	<i>The figurative element in the sign clearly represents a member of the supremacist terrorist hate group Ku Klux Klan (KKK), due to the white hooded tunic with the group's insignia on it. In addition, the person is waving their right arm in a way that resembles the Nazi salute. The message conveyed by the sign is so strong and heavily associated with racist and criminal actions that it cannot be deemed in any way nuanced. Therefore, the sign will be considered, inter alia, contrary to some of the fundamental values of the EU, such as human dignity, freedom, equality and solidarity as proclaimed in the CFREU, and as a consequence, contrary to public policy and accepted principles of morality, <b>for all goods and services.</b></i>
<b>ASIAN PENCIL DICK</b>	Class 10: Sex toys	<i>Even though the target public of sex toys is presumed to be highly tolerant of signs containing a sexual connotation, the message conveyed by the sign is a racist one stereotyping an ethnic group and charged with sexual connotation. It is so offensive and denigratory that the sign will be considered, at least, contrary to some of the fundamental values of the EU, such as human dignity, non-discrimination, inclusion and equality as proclaimed in the CFREU. Therefore, it would be contrary to both accepted principles of morality and public policy for <b>all goods and services.</b></i>

- Cases in which the goods and/or services impact the perception of the relevant public

In some cases, the **goods and services, and the context in which they will be offered, can impact the perception of the relevant public, in the sense that it can accentuate the objectionability of the message conveyed by the sign in terms of public policy and/or accepted principles of morality.** This is the case when the general public, particularly children and young people, could be routinely exposed to the goods and/or services (in supermarkets, broadcasted on television, etc.).

The goods and services and the context accentuate the objectionability of the sign in terms of public policy and/or accepted principles of morality		
Sign	Goods and services	Reasoning
<b>KILL THEM ALL</b>	Class 41: Children's entertainment services	<i>The words 'KILL THEM ALL' convey a message that could be understood as an incitement to kill. In this case, the services applied for, which are addressed to children, <b>accentuate the objectionability of the verbal elements</b> and the sign is more likely to be perceived as an incitement to commit a crime.</i>
<b>AUSCHWITZ MEMORIES</b>	Class 41: Amusement park services	<i>'Auschwitz' was a Nazi concentration camp situated in German-occupied Poland during World War II. In this case, using such a name in relation to amusement parks <b>accentuates the objectionability of the verbal elements</b> and the sign is more likely to be perceived as a trivialisation of the tragedy and its victims.</i>

Conversely, in other cases, **the goods and services, and the context in which they will be offered, may eliminate or counteract the objectionability of the message conveyed by the sign in terms of public**

**policy and/or accepted principles of morality.** This is the case, for instance, for goods and/or services that are only sold in licensed sex shops, where a more relaxed attitude may be appropriate <sup>(29)</sup>.

The goods and services and the context eliminate or counteract the objectionability of the sign in terms of public policy and/or accepted principles of morality		
Sign	Goods and services	Reasoning
<b>KILL THEM ALL</b>	Class 5: Insecticide	<i>The words 'KILL THEM ALL' convey a message that could be understood as an incitement to kill. In this case, the goods applied for <b>counteract the objectionability of the message conveyed</b> and the sign is more likely to be perceived as only referring to killing insects.</i>
<b>AUSCHWITZ MEMORIES</b>	Class 41: Museums	<i>'Auschwitz' was a Nazi concentration camp situated in German-occupied Poland during World War II. The services applied for <b>eliminate any offensive or shocking message</b> and the sign is more likely to be perceived in the context of the objective presentation of specific historical events, for the purpose of educating and raising visitors' awareness.</i>

- **The linguistic and geographical scope**

The **linguistic and geographical scope** of the sign should be analysed. The assessment of whether the sign is contrary to Article 4(1)(f) TMD must be performed in relation to the relevant public that can understand the sign and would be confronted with it.

For this assessment, **although the relevant public may understand a sign that is in a foreign language, its level of sensitivity may be different to that of native speakers** <sup>(30)</sup>. For instance, the perception of an English phrase by a non-native speaker is not necessarily the same as the perception by a native English speaker.

Regarding the geographical scope, the understanding of languages is not strictly limited by geographical borders. It may well be that, for historical, cultural or cross-border market reasons, certain vocabulary of a given language may spread and could be widely understood by the general public in Serbia.

- **Particular contexts and circumstances that may influence the perception of the sign**

Finally, there are particular contexts and circumstances of part of Serbia that are relevant to assess the perception of the public and may, if appropriate, be taken into account in the assessment of both public policy and accepted principles of morality, since they may prevent or aid the registration of the sign. These elements can be, but are not limited to, the following.

- The **social context**, for instance, the linguistic, historical, cultural, religious, or philosophical diversities at the relevant point in time. It influences the perception of the relevant public and as a consequence what will be considered contrary to public policy or to accepted principles of morality in that territory of Serbia.

For instance, world events, such as refugee crises, the rise of extreme right-wing politics, the reclassification of drugs offences, etc.

- **Widespread public opinion** (be it in the target public or the public at large). This can be determined

<sup>(29)</sup> 06/07/2006, EUIPO BoA R 495/2005-G, SCREW YOU, § 21.

<sup>(30)</sup> 27/02/2020, C-240/18 P, Fack Ju Göhte, EU:C:2020:118, § 68.

by considering, for instance, articles from books, the press and other sources that allow that prevalent public opinion to be proven.

- **The way the relevant public has reacted in the past to that sign or similar signs** <sup>(31)</sup>. Although the absence of controversy must be taken into account in order to determine how the relevant public perceives the trade mark applied for, the fact that such sign, or a similar one, has previously been presented before the relevant public without known controversy does not necessarily imply that the sign is not contrary to public policy or to accepted principles of morality <sup>(32)</sup>.
- **In the context of public policy, observations from third countries or other Member States** may, if appropriate, be considered to assess the perception of the public provided that those observations (regarding a positive or negative reaction to/impact of a relevant sign as a trade mark) are in line with the abovementioned Serbian values and principles, as well as with legal agreements reached by the Serbia in the context of international treaties and conventions <sup>(33)</sup>.
- **For accepted principles of morality, legislation and administrative practices** can be indications of what is morally acceptable or unacceptable for members of a given society at a certain time (e.g. broadcasting standards). However, a sign must not be objected to (as contradicting accepted principles of morality) solely because it conflicts with national legislation and practice. Legislation and administrative practices are considered not because of their normative value, but as possible evidence of facts concerning the fundamental moral values and standards accepted by a society.

#### 2.2.3.3 *Determination of the reliable and objective sources from which public policy can be ascertained*

When analysing whether a sign is contrary to public policy, an assessment should be made to determine, from reliable and objective sources, the fundamental norm, principle and/or value offended.

In this regard, the following non-exhaustive list of sources **must** be considered:

- general principles of law,
- international treaties and conventions,
- EU treaties,
- EU legislation,
- EU case-law,
- applicable Member State legislation and Member State case-law <sup>(34)</sup>.

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<sup>(31)</sup> 'As the Advocate General observes in point 94 of his Opinion, those factors include the great success of the comedy of the same name amongst the German-speaking public at large and the fact that its title does not appear to have caused controversy, as well as the fact that access to it by young people had been authorised and that the Goethe Institute – which is the cultural institute of the Federal Republic of Germany, active worldwide and tasked, inter alia, with promoting knowledge of the German language – uses it for educational purposes'. 27/02/2020, C-240/18 P, Fack Ju Göhte, EU:C:2020:118, § 52.

<sup>(32)</sup> 05/10/2011, T-526/09, Paki, EU:T:2011:564, § 36.

<sup>(33)</sup> Examples of international treaties and conventions: (1) Security Council resolution 2178 (2014) on foreign terrorist fighters (FTFs). For example, a trade mark in the name of an ISIS Jihadi bride (such as, Shamima Begum – stripped of UK citizenship) would be unacceptable; (2) the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (also known as Anti-Personnel Mine Ban Convention, Ottawa Convention, or Mine Ban Treaty) – therefore a trade mark glorifying landmines would be unacceptable; (3) the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; (4) the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, also known as 'the Lanzarote Convention'; (5) the Council of Europe Convention on Action against Trafficking in Human Beings; (6) the Convention relating to the Status of Refugees (1951), a United Nations multilateral Treaty; (7) the Convention on the Rights of persons with Disabilities (2006), United Nations Human Rights Convention.

<sup>(34)</sup> When assessing national trade mark applications.

The following non-exhaustive list of sources **may, if appropriate**, be considered:

- governmental and administrative guidelines or codes of conduct (e.g. social distancing in relation to COVID-19).
- public safety and health matters not articulated in legislation (e.g. governmental and science-based professional recommendations).

Nevertheless, it is not enough that the sign contravenes something included in any of the aforementioned sources; it must also affect an interest that Serbia considers to be fundamental in accordance with its own system of values <sup>(35)</sup> <sup>(36)</sup>.

#### 2.2.3.4 Identification of the applicable fundamental moral values and standards

When analysing whether a sign is contrary to accepted principles of morality, the fundamental moral values and standards accepted by a society cannot be detected outside of social norms and context. Their identification should be based on verifiable information rather than just theory or pure logic. **Examiners must provide an objective statement of reasons, and where possible, draw on independent, reliable sources to support their decision.**

The IPO is not obliged to conduct an in-depth empirical survey to establish the accepted principles of morality vis-à-vis a given sign. Nevertheless, any decision must be grounded in a specific social context and cannot ignore factual evidence that either confirms or possibly casts doubt on what does or does not conform to accepted principles of morality within a given society at a given time <sup>(37)</sup>.

To rebut the examiner's objection with regard to accepted principles of morality, the applicant may submit evidence to provide a counter-demonstration of the relevant public's presumable reaction to the sign. This evidence has a strong link to the factual circumstances of each case. Therefore, it is not possible to establish an exhaustive list of evidence or a list of recommended evidence to be submitted in each and every case. Parties may freely choose the evidence that they wish to submit before the relevant authorities, including the IPO, and the matter of its assessment always remains at their discretion. However, in the form of non-binding guidance, the CP12 Common Practice/Common Recommendations – *Evidence in Trade Mark Appeal Proceedings: filing, structure and presentation of evidence and the treatment of confidential evidence* <sup>(38)</sup> may serve as a point of reference for all stakeholders, who may use and adopt the CP12 recommendations they consider useful and applicable in a particular case related to this topic.

### 2.3 Overlap between public policy and accepted principles of morality

As mentioned in section 2.2, public policy and accepted principles of morality are two different concepts that often overlap. This means that an objection can be raised simultaneously on both public policy and accepted principles of morality (e.g. the trade mark may be perceived by the relevant public as directly contrary to the fundamental moral values and standards accepted by society in Serbia at a given time and, at the same time, may contradict or incite, glorify, trivialise or justify the violation of the fundamental norms, principles and/or values in the Serbian society). For this reason, under this ground, a parallel examination of public policy and accepted principles of morality should be performed to determine whether either or both of them apply.

Some scenarios where a sign could, depending on the circumstances of the case, be contrary to both public

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<sup>(35)</sup> 12/12/2019, T-683/18, CANNABIS STORE AMSTERDAM (fig.), EU: T:2019:855, §73-75.

<sup>(36)</sup> EU interests can be found here: [https://european-union.europa.eu/principles-countries-history/principles-and-values/aims-and-values\\_en](https://european-union.europa.eu/principles-countries-history/principles-and-values/aims-and-values_en) and in Article 3 of the Lisbon Treaty.

<sup>(37)</sup> Opinion of Advocate General Bobek, delivered on 2 July 2019 in case 27/02/2020, C-240/18 P, Fack Ju Göhte, EU:C:2020:118, § 83.

<sup>(38)</sup> <https://tmdn.org/#/practices/1819736>

policy and accepted principles of morality <sup>(39)</sup> are the following.

- **Signs related to human rights:** The registration of signs that could be perceived as going against and/or inciting, glorifying, trivialising or justifying the violation of human rights, which are fundamental principles and values of [country], may therefore go against the fundamental moral values and standards of any society. For instance, these may include discriminatory messages; signs that include or could be perceived as a call for hatred for any reason (e.g. on the basis of race, age, sex, culture, religion); and signs against the right to life, human dignity or physical integrity.
- **Signs related to illegal substances which target vulnerable groups (e.g. illicit drugs or substances forbidden for underage people):** The registration of signs glorifying, trivialising or inciting the consumption or use of illegal substances and targeting vulnerable groups (e.g. young people and/or children) may go against fundamental norms, principles and values of Serbia, and affect a fundamental interest of Serbia (e.g. public health). At the same time, they could be contrary to the moral values and standards of the Serbian society, considering that there is a public interest in ensuring that vulnerable groups are not confronted with signs and/or messages that could endanger them.
- **Signs related to a religion:** The registration of signs including a religious symbol may, depending on the context, offend not only believers of the religion, but also those of other beliefs or even none. Religious beliefs should be treated with respect as a matter of public policy since freedom of religion is a fundamental right guaranteed under the CFREU and the European Convention on Human Rights (ECHR) and is considered one of the foundations of a democratic society <sup>(40)</sup>. Consideration should also be given to the different provisions in Serbian legislation, some of which prohibit the registration of signs of high symbolic value as trade marks, in particular religious signs. Depending on the circumstances, morality may also be an issue.
- **Signs related to criminal activities/organisations (e.g. terrorism, the mafia):** The registration of signs related to criminal activities and/or organisations may, depending on the context, be considered contrary to public policy and accepted principles of morality. These activities/organisations are contrary to the ethical and moral principles recognised not only in Serbia, but in all democratic societies, being one of the most serious threats to the fundamental interests of society and the maintenance of social peace and order. These signs contradict the indivisible, universal values on which the EU is founded: human dignity, freedom, equality and solidarity, and the principles of democracy and the rule of law, as proclaimed in the CFREU, where the right to life and to physical integrity stand out as the main, fundamental values without which the others cannot be enjoyed. Serbia's fundamental moral values also prevent the registration of these kinds of signs as trade marks and their commercial exploitation, since the registration of these trade marks would deeply offend and shock not only the victims and their relatives, but also any person who shares these universal values <sup>(41)</sup>.

## 2.4 Freedom of expression

In line with EU case-law, **freedom of expression must be taken into account** when analysing whether a sign is contrary to Article 4(1)(f) TMD. In particular, the Court of Justice states that:

*... freedom of expression, enshrined in Article 11 of the Charter of Fundamental Rights of the European Union, must ... be taken into account when applying Article 7(1)(f) of Regulation No*

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<sup>(39)</sup> Examples for each of these scenarios are presented in section 2.5.

<sup>(40)</sup> 05/09/2012, joined cases C-71/11 and C-99/11, Bundesrepublik Deutschland vs Y and Z, EU:C:2012:518, § 57.

<sup>(41)</sup> 15/03/2018, T-1/17, La Mafia SE SIENTA A LA MESA (fig.), EU:T:2018:146, § 35, 36, 47; EUIPO BOA, R 176/2004-2, Bin Ladin, §17.

207/2009. Such a finding is corroborated, moreover, by recital 21 of Regulation No 2015/2424, which amended Regulation No 207/2009 and recital 21 of Regulation 2017/1001, both of which expressly emphasise the need to apply those regulations in such a way as to ensure full respect for fundamental rights and freedoms, in particular freedom of expression <sup>(42)</sup>.

The impact of this principle on the assessment of Article 4(1)(f) TMD is currently not settled in Serbia or EU trade mark law. For further information regarding 'potentially relevant legal sources' for the application of Article 10 ECHR and Article 11 CFREU (e.g. case-law from the General Court, Court of Justice and European Court of Human Rights), please refer to Appendix.

## 2.5 Signs that could fall under Article 4(1)(f) TMD

To facilitate the assessment of this ground for refusal, a non-exhaustive list of groups of signs, containing illustrative examples, that could fall under Article 4(1)(f) TMD has been created. This list does not intend to cover all the signs that could fall under this ground for refusal, nor does it imply that a sign could not fall under more than one group. **Although the assessment of whether a sign is contrary to public policy, accepted principles of morality or both will always be made on a case-by-case basis, considering the normal level of sensitivity and tolerance of the relevant public in the jurisdiction as well as all the circumstances specific to Serbia and the particular case, the principles included in this part of the Practice Paper serve as guidance to assess signs under this provision in a predictable way.** The examples included in this chapter aim to illustrate the principles laid out above each of them. Therefore, they should always be considered in connection with the respective group and principle being referred to, bearing in mind the general considerations included in section 1.3 of this document.

For the groups included in this chapter, it should be assumed that **the relevant public in all the examples understands English in the same way as a native speaker**. Moreover, the examples provided herein are only shown for the purposes of the assessment of Article 4(1)(f) TMD; therefore, the fact that some of them would be acceptable under this provision does not mean they could not be refused based on other grounds for refusal.

### 2.5.1 Signs including/related to illicit substances

This group comprises, but is not limited to, signs where the verbal or figurative elements, or their combination, include and/or are related to:

- illegal substance(s) in Serbia, the EU and/or in one or more Member States, or substances used in an illegal manner according to the relevant Serbian, EU or Member State regulations, such as heroin, crystal methamphetamine, cocaine, crack, ecstasy or certain hallucinogens, including LSD, cannabis, opioids, ketamine or amphetamines; or
- legal substance(s) used in an illegal manner, such as glue or petrol, which are sold legally but should not be used in a manner that is not intended, for example, inhaling fumes, or alcohol consumption by minors.

In principle, these signs are likely to be considered **contrary to public policy** whenever they **clearly promote, encourage, glorify and/or trivialise the recreational consumption of the above substances**. The sign could also be **contrary to accepted principles of morality** if it could be **perceived as offensive to the moral values and standards** of a society of Serbia, an EU MS and/or the EU.

These signs will be understood as contravening fundamental norms, principles and values of societ[ies] in Serbia and the EU, which according to EU drug policy <sup>(43)</sup> aim to, inter alia, protect and improve public health

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<sup>(42)</sup> 27/02/2020, C-240/18 P, Fack Ju Göhte, EU:C:2020:118, § 56.

<sup>(43)</sup> [https://ec.europa.eu/home-affairs/policies/internal-security/organised-crime-and-human-trafficking/drug-policy\\_en](https://ec.europa.eu/home-affairs/policies/internal-security/organised-crime-and-human-trafficking/drug-policy_en)

as well as combat the harmful effects created by the use of such substances.

Regarding illicit drugs or substances used in an illegal manner, the importance of the protection of those fundamental interests is further emphasised by:

- Article 83 of the Treaty on the Functioning of the European Union (TFEU), according to which illicit drug trafficking is one of the areas of particularly serious crime with a cross-border dimension, in which the EU legislature may intervene.
- The third subparagraph of Article 168(1) TFEU, according to which the EU is to complement the Member States' action in reducing drug-related health damage, including information and prevention <sup>(44)</sup>.

Objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
	Class 25: Clothing	<p><i>The combination of the verbal element 'COCAINE' (a recreational drug which is illicit in Serbia and the EU) and the figurative element of a superhero will be perceived by the general public encountering the sign in their day-to-day lives as conveying a positive message of the effects of consuming cocaine, and glorifying and/or trivialising the use of drugs. This goes against, at least, the fundamental Serbian and EU interests of protecting and improving public health, as well as combating the harmful effects of illicit drugs, as established in Article 83 and Article 168(1) TFEU. Therefore, the sign is <b>contrary to public policy</b>. The sign is also <b>contrary to accepted principles of morality</b> to the extent that it trivialises the consumption of cocaine in a way that causes offence, as the consumption of this substance produces serious health damage. Therefore, encouraging its use would be perceived as contrary to the moral values and standards of the society of Serbia, a particular MS or, as the case may be, the EU.</i></p>
	Class 25: Clothing	<p><i>Cannabis consumption is illegal in Serbia and/or may be legal in some Member States, the message conveyed by the sign 'LOVE, PEACE AND GET STONED', together with the figurative elements consisting of cannabis leaves and smoke, will be perceived by the general public encountering the sign in their day-to-day lives as clearly promoting, glorifying and/or trivialising the illicit/recreational consumption of this substance. This goes against the fundamental Serbian and EU interests of protecting and promoting public health, as well as combating the harmful effects of illicit drugs, as established in Article 83 and Article 168(1) TFEU. Therefore, the sign is <b>contrary to public policy</b>. The sign could also be <b>contrary to accepted principles of morality</b> to the extent that it trivialises the damaging or excessive consumption of cannabis. Therefore, encouraging its abuse could be perceived as contrary to the moral values and standards of the society of Serbia, a particular MS or, as the case may be, the EU.</i></p>

<sup>(44)</sup> 12/12/2019, T-683/18, CANNABIS STORE AMSTERDAM (fig.), EU: T:2019:855, §74-75.

<h1>WEED PARTY</h1>	<p>Class 41: Festivals</p>	<p>The verbal element 'WEED' has different meanings. It could refer to 'a wild plant growing where it is not wanted, especially among crops or garden plants', or to 'illicit cannabis'. In combination with 'PARTY' and in connection with festivals, the sign will be perceived by the general public encountering it in their day-to-day lives as clearly promoting, glorifying and/or trivialising the illicit/recreational consumption of cannabis. This goes against the fundamental Serbian and EU interests of protecting and promoting public health, as well as combating the harmful effects of illicit drugs, as established in Article 83 and Article 168(1) TFEU. Therefore, the sign is <b>contrary to public policy</b>. The sign is also <b>contrary to accepted principles of morality</b> to the extent that it trivialises the damaging or excessive consumption of cannabis. Therefore, encouraging its abuse could be perceived as contrary to the moral values and standards of the society of Serbia, a particular MS or, as the case may be, the EU.</p>
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In addition, signs referring to a **legal substance used in a manner that is harmful (to the extent that seriously threatens the life, health or well-being of the target public or the public at large), or a manner that is illegal in Serbia, the EU or in an EU MS**, are also likely to be considered **contrary to public policy** because they trivialise or normalise harmful actions or activities that affect the fundamental Serbian and EU interests of protecting and improving public health as established in Article 168(1) TFEU. These signs could also be **contrary to accepted principles of morality** when they are perceived as offensive to the moral values and standards of the Serbian society or a society in a MS and/or the EU.

Objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
	<p>Class 18: Bags</p>	<p>The combination of a man inhaling glue with the slogan 'LIFE IS GOOD' strongly suggests that inhaling glue makes life 'good' in some way. Although glue itself is not illegal, this message will be perceived by the general public as encouraging the use of glue for its psychotropic effect. It is a well-known fact that 'glue sniffing' poses a huge health risk and is considered a precursor to abuse of other illicit drugs. Furthermore, 'glue sniffing' has for many years been considered a real and widespread problem among children and teenagers – a group which may be particularly influenced by the sign's message that inhaling glue improves your quality of life. Consequently, such a message goes against the fundamental Serbian and EU interests of protecting and improving public health, as established in Article 168(1) TFEU. Therefore, the sign is <b>contrary to public policy</b>. The sign is also <b>contrary to accepted principles of morality</b> to the extent that it could be perceived as encouraging the inappropriate consumption of glue, and thus, as offensive.</p>

Moreover, if a sign included in this group is applied for **with respect to goods and/or services for which the relevant public is a vulnerable group, such as children**, the sign is more likely to **also** be considered **contrary to public policy and/or to accepted principles of morality**, because endangering the well-being of children goes against the fundamental Serbian and EU interests of protecting and improving children's health and is also immoral.

Objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
<b>ALCOHOL HERO</b>	Class 28: Toys	<i>The sign refers to a substance (alcohol) that is only allowed for people over the legal age (i.e. at 18 in Serbia and between 16 and 20 years depending on the EU MS). The goods applied for are directed at children, for whom alcohol consumption is forbidden in [country] and the whole EU. In addition, alcohol-related harm is a major public health concern in [country] and the EU. The combination of the words 'HERO' and 'ALCOHOL' in connection with the goods applied for could be perceived as promoting, encouraging, glorifying and/or trivialising the consumption of an illicit substance to children, which goes against the fundamental Serbian and EU interests of protecting and improving public health, as well as combating the harmful effects created by the use of drugs, as established in Article 168(1) TFEU. Therefore, the sign is <b>contrary to public policy</b>. Moreover, considering that there is a public interest in ensuring that vulnerable groups are not confronted with signs and/or messages that could endanger them, the sign is also <b>contrary to accepted principles of morality</b>.</i>

However, when the overall composition of the sign makes it clear that it would not be perceived by the relevant public as promoting, encouraging, glorifying and/or trivialising the recreational consumption of an illegal substance or a legal substance used in an illegal manner, or the sign conveys a message against the use of such a substance, the sign will not be considered contrary to Article 4(1)(f) TMD.

Non-objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
<b>HEROIN KILLS - KILL HEROIN</b>	Class 44: Addiction treatment services	<i>The verbal elements 'HEROIN KILLS - KILL HEROIN' in relation to 'addiction treatment services' will be clearly perceived by the relevant public as promoting the fight against the drug, in line with health and civil protection policies that are covered by the fundamental norms. Therefore, despite the sign containing the verbal element 'heroin', it is <b>not objectionable under this ground for refusal</b>.</i>
	Class 3: Hand cream	<i>The combination of the verbal element 'HEMP LIFE' and the figurative element referring to the genetic characteristics of a plant do not convey any message which could be perceived as promoting, encouraging, glorifying and/or trivialising the illicit/recreational use or consumption of the illegal substance. Therefore, despite the sign containing the verbal element 'hemp'<sup>(45)</sup>, it would <b>not be objectionable under this ground for refusal</b> since in this context it could be understood as 'industrial hemp', which does not possess narcotic effects.</i>

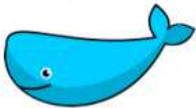
<sup>(45)</sup> According to [Collins Dictionary](#), the term 'hemp' is a plant used for making rope, but also refers to cannabis and marijuana.

### 2.5.2 Signs referring/related to public safety risks

This group comprises, but is not limited, to signs where the verbal or figurative elements, or their combination, include and/or are related to acts and/or omissions that affect and/or endanger the public's safety and/or health. This comprises signs:

- that promote and/or trivialise a public safety risk and/or the consequences arising from it; or
- whose registration poses a risk to public safety and/or health.

In principle, these signs are likely to be considered contrary to **public policy** whenever they can be understood by the relevant public as **clearly inciting and/or trivialising acts and/or omissions that affect/endanger the public's safety and/or health, and/or the consequences arising from such acts or omissions**, which are fundamental values of Serbia and the EU and whose protection is considered a fundamental interest under EU health policy. Moreover, they are likely to be considered contrary to **accepted principles of morality** whenever they **clearly offend and/or shock the relevant public's moral values and standards** in any manner.

Objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
<p><b>THE AMAZING BLUE WHALE CHALLENGE</b></p> 	Class 41: Education and instruction services	<p><i>The sign refers to a social media challenge that resulted in numerous victims. The message conveyed by the sign could be understood as inciting self-harm and suicide, which is against, at least, the fundamental right to life, public safety and protection of public health. These are fundamental values covered under the Serbian and the EU health policy, the protection of which is one of the fundamental interests of Serbia and the EU (as established in the CFREU and Article 168(1) TFEU). Therefore, it is considered <b>contrary to public policy</b>. Moreover, the sign is also <b>contrary to accepted principles of morality</b> because using an incitement to self-harm and suicide, which goes against the fundamental right to life, for commercial purposes would be likely to shock and offend the relevant public, which includes vulnerable age groups.</i></p>
<p><b>THE BINGE DRINKING CHALLENGE TOUR – DRINK TILL YOU DROP</b></p>	Class 39: Travel services	<p><i>The message conveyed by the sign incites the consumption of an excessive amount of alcohol in a short period of time, which is against, at least, Serbia and the EU health policy and the fundamental Serbian and EU interests of protecting and improving public health, as established in Article 168(1) TFEU. Therefore, it is considered <b>contrary to public policy</b>. Moreover, the sign is also <b>contrary to accepted principles of morality</b> because it trivialises the consumption of alcohol in a manner that causes offence, as the excessive consumption of alcohol produces serious health damage. Therefore, encouraging it could be perceived as contrary to the moral values and standards of the Serbian society, the society of a particular EU MS or, as the case may be, the EU.</i></p>

Moreover, a sign is **more likely** to be considered contrary to Article 4(1)(f) TMD **when its use poses a risk to public safety and/or health**; for example, if the sign very closely resembles a symbol used to warn about a particular safety risk and its use would erroneously inform and/or warn the public of the existence of a risk,

or if the sign actively discourages compliance with health and safety measures. This erroneous information or risky message could be perceived from the representation of the sign and/or from the goods and/or services applied for.

Objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
<b>HELMETS ARE FOR LOSERS</b>	Class 12: Motorcycles	<i>The message conveyed by the sign in connection with the goods applied for suggests that people who use helmets while driving a motorcycle are considered 'losers' – so their careful approach to safety matters is seen as a sign of fear and weakness. This message could be perceived as an encouragement to avoid using helmets, which are mandatory for public safety and not using them implies a road safety offence in Serbia and many EU Member States, in line with health and civil protection policies that are covered by fundamental norms, under Article 91(1)(c) and Article 168(1) TFEU. Therefore, the sign is <b>contrary to public policy</b>.</i>
	Class 9: Low voltage batteries	<i>The sign is almost identical to the international hazard or warning symbol known as 'high voltage symbol' or 'caution, risk of electric shock'. The use of this symbol must be limited to situations where a danger of high voltage must be made known to the public. Its use in a trade mark, in a context where there is no actual danger of high voltage, may reduce the significance of that hazard symbol in the eyes of the public and could pose a risk to public safety and/or health as it could lead consumers to ignore the symbol in dangerous situations where it is appropriately used. This possible reduction is even more significant since the goods applied for work with electricity. This is against the fundamental Serbian and EU values of public safety and public health as established in the CFREU and Article 168(1) TFEU. Therefore, it is considered <b>contrary to public policy</b>.</i>

Nonetheless, the fact that a sign refers to a public safety risk and/or the consequences arising from it does not imply that it would be immediately rejected under Article 4(1)(f) TMD. In general, this type of sign **will not** be considered contrary to Article 4(1)(f) TMD **when it aims to educate or raise awareness about, or overcome, the danger and/or consequences arising from the public safety risk.**

### 2.5.3 Signs with a religious or sacred nexus

This group comprises, but is not limited to, signs where the verbal or figurative elements, or their combination, include and/or are related to religious or sacred:

- leading figures (e.g. the pope for the Catholic Church),
- symbols,
- texts,
- ceremonies,
- worshippers.

A sign that refers to or includes a religious/sacred figure, symbol, text, and/or ceremony held in high esteem by the believers of that religion, is likely to be **contrary to public policy and/or accepted principles of morality when perceived as insulting, discriminating, degrading, denigrating and/or trivialising, and**

thus, causing offence to those believers, because it would be unacceptable to the general public's sensitivities if they became aware of the offence caused. There is a public interest in ensuring that all religious beliefs and sensitivities of the public are respected and protected.

However, not every sign that contains verbal and/or figurative elements with a religious or sacred nexus would violate the accepted principles of morality of the Serbian society or the society of an EU MS and/or the EU. In principle, signs including the representation of religious/sacred figures, symbols, texts, ceremonies and/or worshippers (without any disparaging connotation) are **unlikely** to be refused under Article 4(1)(f) TMD if **they are applied for with respect to goods and/or services whose purpose, content or intended use is related to religious activities.**

Non-objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
	Class 41: Religious education	<i>The sign consists of two figurative elements: in the foreground there is a depiction of Shiva, a Hindu god, and in the background there are a series of decorative palm trees. Considering that the services applied for are for religious purposes, it is unlikely that the relevant public would be offended by the use of the sign as a trade mark. Therefore, the sign is <b>not objectionable under Article 4(1)(f) TMD.</b></i>
	Class 45: Religious services	<i>The sign is composed of a Latin cross made of a pattern of colourful hearts. The Latin cross is a symbol of Christianity and is used very often with respect to religion. The services applied for, which concern the practice of religion, reinforce this message, leaving no doubt that the sign is conceived for religious purposes and would not shock or affect the moral values of believers, those of other beliefs or even non-believers. In addition, the relevant public will encounter the sign in religious environments. Therefore, the sign is <b>not objectionable under Article 4(1)(f) TMD.</b></i>

Conversely, if a sign included in this group is applied for with respect to banal goods and/or services which are not related to religious activities, it is more likely to insult and/or offend the moral values of the Serbian society, or the society of an EU MS and/or the EU. The banal use of a sign that basically consists of a religious symbol that is held in high esteem by the believers of the religion in question and is **more likely** to be considered **contrary to accepted principles of morality.**

Objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
	Class 16: Toilet paper	<i>The combination of a Latin cross, the verbal element 'CRUCIFIX' and the goods applied for is very likely to be seen as gratuitously offensive to the moral value of respecting the sacred symbols held in high esteem by religious people and the sensitivities of the society of Serbia, a particular EU MS, or as the case may be, the EU. Therefore, not only Christians but also those of other beliefs or even non-believers, who may encounter the sign, for instance, in a supermarket, would perceive it as unacceptable and disrespectful. Therefore, the sign is <b>contrary to accepted principles of morality.</b></i>

 <p><b>VIRGIN MARY'S DELIGHTS</b></p>	<p>Class 10: Sex toys</p>	<p><i>Although the representation of the Virgin Mary applied for with respect to 'sex toys' will be found in specialised shops, the sign will be perceived as highly shocking and gratuitously offensive to the moral values not only of Christians but also of those of other beliefs or even non-believers, due to the use in relation to sex toys of a figure that is held in very high esteem by religious people.. Therefore, the sign is <b>contrary to accepted principles of morality.</b></i></p>
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If a sign included in this group is applied for **with respect to goods and/or services which are not related to religious activities, but it does not insult and/or offend the moral values** of the believers of that religion and the Serbian society, or the society of an EU MS and/or the EU, it is **unlikely to be considered contrary to accepted principles of morality.**

Non-objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
<p><b>Jewish delights</b></p>	<p>Class 30: Food products</p>	<p><i>The sign consists of the verbal elements 'JEWISH DELIGHTS', applied for with respect to food products. Although the sign is not applied for with respect to religious goods or services, it does not transmit an insulting or offensive message that could offend the moral values of the believers of that religion or the Serbian society or the society of a particular EU MS or, as the case may be, the EU. Therefore, the sign is <b>not contrary to accepted principles of morality.</b></i></p>
	<p>Class 33: Wine</p>	<p><i>The sign consists of a mere representation of Saint George without transmitting an insulting or offensive message. In relation to the goods applied for, it is not uncommon to use terms related to religion in the wine sector, including the names of saints, which usually correspond to the name of the town or city where the wine is produced. Therefore, the sign is <b>not contrary to accepted principles of morality.</b></i></p>

Additionally, the respect and freedom of religion are not only fundamental principles enshrined in several EU and EU MS national fundamental norms (e.g. the CFREU) and Serbia, but are also considered one of the foundations of a democratic society. Therefore, if a sign or the message conveyed by it can be **clearly perceived as contravening and/or inciting, glorifying, trivialising or justifying the violation of such principles and affects an interest that [country], the EU and/or the EU Member State(s) concerned consider[s] to be fundamental in accordance with their[its] own systems of principles and values,** the sign would also be **considered contrary to public policy.**

Objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
	<p>Class 25: Clothing</p>	<p><i>The sign conveys a message of extreme irreverence or intolerance towards Christian beliefs and values, which is against, at least, the fundamental and EU right enshrined in Article 10 of the CFREU. Therefore, it is <b>contrary to both public policy and accepted principles of morality.</b></i></p>

In principle, signs that refer to or include a religious/sacred figure, symbol, text, ceremony and/or worshipper

in a **provocative, offensive or profane manner, and/or attack a religion in an unwarranted or abusive manner, are likely to be contrary to accepted principles of morality**, as they could be perceived as insulting and/or offending the moral values of the believers of the religion in question and of the Serbian society or in the society of an EU MS and/or in the EU.

Objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
	Class 35: Retail of clothing	<i>The combination of an image of the Virgin Mary with the verbal elements 'VIRGIN MARY'S BROTHEL', applied for with respect to retail services for clothing, transmits a gratuitously provocative and offensive message in relation to the moral values of not only Christians but also those of other beliefs or even non-believers, who may encounter the sign incidentally in their daily lives. Therefore, the sign is <b>contrary to accepted principles of morality</b>.</i>
	Class 18: Bags	<i>The combination of an image of the Hindu god Vishnu with the verbal elements 'VISHNU IDIOT', applied for with respect to 'bags', transmits a gratuitously provocative and offensive message in relation to the moral values of not only Hindus but also those of other beliefs or even non-believers, who may encounter the sign incidentally in their daily lives. Therefore, the sign is <b>contrary to accepted principles of morality</b>.</i>

Account must be taken of the fact that some **Member State legislation provides specific provisions for preserving signs of high symbolic value, in particular religious symbols, and protecting them from trade mark registration** <sup>(46)</sup>.

#### 2.5.4 Signs including/related to vulgar elements (swear words, offensive gestures, etc.)

This group comprises, but is not limited to, signs in which the verbal or figurative elements, or their combination, include or are related to:

- swear words,
- offensive gestures or uses,
- insults.

Article 4(1)(f) TMD concerns, inter alia, the protection of the principles and values of the Serbian legal system and does not contain a set of linguistic rules for the suppression of unpleasant expressions or undesired vocabulary. These signs should have at least a **clear vulgar element and be offensive. Swear words, offensive gestures or uses and insults, as well as their public perception, may vary greatly depending on the applicable language and the part(s) of the territory** (e.g. a chin flick might be perceived as offensive in Italy, whereas in Spain it would not).

In principle, these signs are likely to be **contrary to accepted principles of morality** whenever they might be perceived by the relevant public as clearly **insulting, derogatory and/or offensive to their moral values**, particularly if the sign and/or the message conveyed by it is addressed to any specific group or individual(s).

In addition, signs like this **may contain characteristics that could contravene and/or incite the contravention of a fundamental norm, principle and/or value in Serbia, the EU and/ or in an EU MS**, and

<sup>(46)</sup> Based on Article 4(3)(b) TMD.

as a consequence, they could **also** be considered **contrary to public policy**.

Objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
	Class 25: Clothing	<p>The sign is comprised of the verbal elements 'FUCKING ASSHOLE', which is an offensive manner to refer to a person and is highly insulting and obnoxious, together with the figurative element of a hand raising the middle finger, which is a graphical representation of an insulting gesture. The relevant public, whose level of sensitivity and tolerance is normal, will perceive the sign as a whole to be so strong, shocking, insulting and offensive that the sign is <b>contrary to accepted principles of morality for all goods and services</b>.</p>
	Class 18: Bags	<p>The sign depicts a person using the EU flag as toilet paper. Such use of the flag could be perceived by the general public as vulgar, insulting and offensive. Therefore, the sign is <b>contrary to accepted principles of morality</b>.</p> <p>In addition, the message conveyed by the sign could be understood as a desecration of the EU flag, and therefore, it is disrespectful towards a whole region, which goes against the EU common value of respecting the diversity of the cultures and traditions of the peoples of Europe, as established in the CFREU. Therefore, the sign is also <b>contrary to public policy</b>.</p>

Nonetheless, it is possible that, despite **containing unpleasant or undesired words, gestures and/or uses**, a sign and/or the message conveyed by it **is not considered sufficiently offensive to be refused** under accepted principles of morality.

Non-objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
	Class 33: Alcoholic beverages	<p>According to the Collins dictionary, the verbal element 'BASTARD' refers to a person whose parents were not married at the moment of their birth and therefore, it might be unpleasant to be called such a term. However, the fact that it is preceded by the words 'I AM A' would detract from the seriousness of the insult and introduce an element of irony and humour aimed at oneself. In relation to 'alcoholic beverages' in Class 33, it will not be perceived as a message addressed to any third person. Therefore, the sign is <b>not contrary to accepted principles of morality</b>.</p>

**Despite some swear words and offensive gestures being adopted into everyday vocabulary, they could still be perceived as offensive by part of the public.** In this regard, there is a public interest in ensuring that registration is not granted to signs consisting of offensive words with which consumers, especially children and young people, may be subsequently confronted.

#### 2.5.5 Signs including/related to obscenity, sexuality and innuendo

This group comprises, but is not limited to, signs where the verbal or figurative elements, or their combination, have a strong sexual content in relation to the public that would encounter the sign considering the goods and

services. This comprises signs that include and/or are related to:

- sexual activity/practice (masturbation, intercourse, etc.),
- genitalia,
- nudity,
- slang words referring to the above.

In principle, these signs are likely to be **contrary to accepted principles of morality** whenever they might be perceived by the relevant public as **clearly insulting, offending and/or shocking their moral values due to the meaning of the sign and, eventually, because of the goods and/or services applied for.**

Objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
<b>DON'T BE A C*NT</b>	Class 25: Clothing	<i>The verbal element 'C*NT' in the sign would be clearly perceived by the relevant public as the word 'cunt'. According to the Oxford dictionary, this is a slang word for a woman's vagina and outer sexual organs. For 'clothing', the relevant public will not only be the target public but also other people that may encounter the sign incidentally. Since this word would be found clearly offensive and insulting to the relevant public's moral values, the sign is <b>contrary to accepted principles of morality.</b></i>
<b>COCK</b>	Class 18: Bags	<i>According to the Oxford dictionary, the verbal element 'COCK' has different meanings: it could be used, inter alia, to refer to an 'adult male chicken' (i.e. a 'rooster') and to a 'penis'. The sign does not contain any other elements that may influence the understanding of the sign as referring to a 'rooster'. For 'bags', the relevant public will not only be the target public but also other people that may encounter the sign incidentally, for instance, in a shop or walking around. Therefore, the sign is <b>contrary to accepted principles of morality</b> since it will be perceived as obscene, shocking and offensive in one of its meanings.</i>

It should be highlighted that there are **industries that are specialised in and/or strictly related to activities that these signs** may refer to (e.g. the pornographic industry, sex shops/websites devoted to sex products). Therefore, the **goods and/or services applied for play an important role** in the assessment of signs under this group.

In principle, when these signs are applied for with respect to the **goods and/or services related to such industries**, the offensive character will be mitigated and thus, the sign is **less likely to be found contrary to Article 4(1)(f) TMD** because those who would be exposed to it are less likely to be offended and/or shocked by the content of the sign than the general public.

Non-objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
	Class 10: Sex toys	Despite the fact that the phrase 'FLY ME TO THE MOON', in combination with the figurative element, has a sexual connotation, which could be perceived as obscene, shocking and/or offensive by the general public, the sign is not considered to be offensive because the goods applied for ('sex toys') are normally offered to the public in specialised shops. As such, the relevant consumers are unlikely to be offended and shocked by a trade mark containing sexually charged verbal and/or figurative elements. Instead, they will only find the sign allusive in a humorous way. Therefore, the sign is <b>not objectionable under Article 4(1)(f) TMD</b> .

Conversely, when these signs are applied for **with regard to goods and/or services not related to such industries**, they are **more likely to be found contrary to Article 4(1)(f) TMD** because the general public will be exposed to the trade mark and would be more likely to be shocked and/or offended by the content of the sign.

Objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
	Class 28: Children's toys	The phrase 'FLY ME TO THE MOON', in combination with the figurative element, has a sexual connotation which could be perceived as obscene, shocking and offensive by the general public. Since the goods applied for address a vulnerable group (i.e. children), the sign is considered <b>contrary to accepted principles of morality</b> , because endangering the well-being of children is immoral.

It is also possible that a sign including/related to obscenity, sexuality and innuendo would not be found contrary to Article 4(1)(f) TMD, if the sign contains **only a mild sexual innuendo, or it is considered merely humorous and/or allusive, and thus, in bad taste**. Likewise, when a sign, although obscene, **does not transmit any message, insult or incitement that could be found likely to cause noticeable offence to the general public, and/or it does not affect or attack a particular group or person**, it would be **less likely to be considered contrary to Article 4(1)(f) TMD**.

Non-objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
	Class 20: Bathroom vanities	The figurative element in the sign, although vulgar, depicts a natural bodily function in a humorous and non-sexualised manner; therefore, the sign is not likely to give offence. At most, the sign may be found unpleasant and in bad taste, but it is <b>not sufficient to be considered contrary to public policy or accepted principles of morality</b> .
	Class 25: Clothing	The sign would first be perceived as a highly stylised representation of the letter 'K'. Since the target public of clothing only displays an average degree of attention, they will be unlikely to engage in further interpretative effort and close inspection of the sign. Therefore, the perception of the representation of a sexual position will

		<i>not be immediately apparent. In addition, children exposed to this sign are even less likely to perceive any sexual content. Therefore, the sign <b>would not be contrary to accepted principles of morality.</b></i>
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2.5.6 Signs disparaging or slurring a particular group

This group comprises, but is not limited to, signs where the verbal or figurative elements, or their combination, attack and/or belittle a particular group on the basis of sex and gender, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation, etc. In particular, this refers to signs which consist of or contain:

- offensive stereotypes; and
- terms or messages that incite hate, prejudice, aversion, or exclusion towards a group <sup>(47)</sup>.

Signs disparaging or slurring a particular group are more **likely** to be considered **only contrary to accepted principles of morality** when the sign and/or the message conveyed by it might be perceived by the relevant public **as offensive, degrading, and/or derogatory to a particular group of people**. Moreover, if the sign or the message conveyed by it is understood **as discriminatory, racist, an incitation or call for hatred, and/or contravenes a fundamental principle and/or value in Serbia, the EU and/or in an EU MS** (e.g. the respect for human rights, including the rights of persons belonging to minorities), the sign is **likely** to **also** be considered **contrary to public policy**.

Objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
	Class 41: Education and instruction services	<i>The sign includes a figurative element that is a symbol of the LGBTIQ+ collective, which is accompanied by the verbal elements 'LET'S KEEP THEM STRAIGHT'. Taking into consideration that 'straight' is a slang term to refer to heterosexual persons, the sign could be perceived as conveying a message of discrimination, homophobia, contempt, prejudice, aversion, hatred, and/or exclusion towards a particular group, which is against, at least, the fundamental principles and values of Serbia and that are common to all the EU Member States, such as human dignity, inclusion and non-discrimination, as established in the CFREU. Therefore, the sign is <b>contrary to both public policy and accepted principles of morality for all goods and services.</b></i>

<sup>(47)</sup> See as a reference for informative purposes: Monitoring discriminatory signs and symbols in European football (Fare Network): [https://www.farenet.org/wp-content/uploads/2016/10/Signs-and-Symbols-guide-for-European-football\\_2016-2.pdf](https://www.farenet.org/wp-content/uploads/2016/10/Signs-and-Symbols-guide-for-European-football_2016-2.pdf)

<p><b>USELESS OLD MEN</b></p>	<p>Class 43: Retirement home services</p>	<p>The sign conveys a message that could be perceived as disparaging, discriminatory on the grounds of age and offensive to elderly men, which is against, at least, the fundamental principles and values of Serbia and that are common to all the EU Member States such as human dignity, inclusion and non-discrimination, as established in the CFREU. Therefore, the sign is <b>contrary to both public policy and accepted principles of morality.</b></p>
<p><b>WOMAN, YOUR PLACE IS IN THE KITCHEN!</b></p> 	<p>Class 41: Education and instruction services</p>	<p>The message conveyed by the sign in the context of the services applied for is that working in the kitchen should be the only life goal for women. This message is perceived as degrading to women in general. Therefore, the sign is <b>contrary to accepted principles of morality.</b> In addition, the message conveyed by the sign goes against the fundamental principles and values of Serbia and that are common to all the EU Member States such as non-discrimination, inclusion, justice, solidarity, etc., and in particular, equality between women and men, as established in the CFREU. Therefore, the sign is also considered <b>contrary to public policy.</b></p>
	<p>Class 30: Chocolates</p>	<p>The sign depicts a line of people of colour in a cocoa plantation following a colonialist. The figurative elements convey a white supremacist view that can help perpetuate negative stereotypes of black inferiority and dependence. This combination is likely to shock, discomfort and offend the moral values of not only the group that is being disparaged, but also anyone who faces the sign and has normal levels of sensitivity and tolerance. Moreover, keeping messages of racial differences off the registers is a matter of public policy since they reinforce prejudices. The sign will be perceived by the general public as conveying a message of, at least, discrimination, racism and prejudice towards a particular group, which goes against some of the fundamental principles and values of Serbia and that are common to all the EU Member States such as non-discrimination, inclusion, justice, equality and solidarity as established in the CFREU. Therefore, the sign is <b>contrary to both public policy and accepted principles of morality for all goods and services.</b></p>
	<p>Class 25: Clothing</p>	<p>The message 'WHITE LIVES MATTER' is a slogan of white supremacist activists around the world that originated in 2015 as a racist response to the Black Lives Matter movement <sup>(48)</sup>. In combination with the background consisting of the flag of the Confederate States of America <sup>(49)</sup>, it can be perceived by the relevant public as offensive and denigratory for the</p>

<sup>(48)</sup> The Black Lives Matter movement is an international social movement, formed in the United States in 2013. It is dedicated to fighting racism and anti-Black violence, especially in the form of police brutality. The name Black Lives Matter signals condemnation of the unjust killings of Black people by police and the demand that society value the lives and humanity of Black people as much as it values the lives and humanity of white people.

<sup>(49)</sup> In 1860 and 1861, eleven southern states seceded from the United States to protect the institution of slavery, forming the Confederate States of America and sparking the U.S. Civil War. After the war, their flag was adopted as a symbol of Southern heritage, while at the same time representing slavery and white supremacy.

		<p><i>Black community and for the people engaged in the fight for civil rights, and it is taking advantage of the well-known tragedy behind the Black Lives Matter movement. Therefore, the sign is <b>contrary to accepted principles of morality</b>.</i></p> <p><i>The message reinforced by the Confederate flag is discriminatory and racist. In addition, it could be considered an incitation or call for hatred, which is against the fundamental principles and values of Serbia and that are common to all the EU Member States, such as non-discrimination, inclusion, justice, equality and solidarity, as established in the CFREU. Therefore, the sign is <b>also contrary to public policy</b>.</i></p>
 <p><b>SLAY THE PIGS!</b></p>	<p>Class 25: Uniforms</p>	<p><i>The sign consists of a figurative element that represents two pigs wearing a sort of police hat as well as the words 'SLAY THE PIGS!'. The link that the sign establishes between the animal and the police reinforces the meaning of the slang term 'pigs', used to refer to police. The message conveyed by the sign could not only be perceived by the general public as promoting violence against police officers, but also as denigratory and degrading, not only for those who work in the field of security forces and law enforcement agencies, but also for the general public who trust in their work, necessary to guarantee the fundamental principles and values of Serbia and that are common to all the EU Member States, such as the rule of law, freedom, democracy, human rights, etc. Therefore, the sign is <b>contrary to accepted principles of morality</b>.</i></p> <p><i>In addition, considering that the sign is promoting violence, and is derogative and disrespectful towards a public organisation, it could be considered contrary to fundamental principles and values of Serbia and that are common to all the EU Member States, such as, at least, the rule of law, as established in the CFREU, and therefore, <b>contrary to public policy</b>.</i></p>
	<p>Class 36: Financial services</p>	<p><i>This figurative element refers to Jewish people and is recognised and perceived by this community as an offensive, insulting and disparaging stereotype. Therefore, the sign is <b>contrary to accepted principles of morality</b>.</i></p> <p><i>In addition, this sign could be perceived as an antisemitic insult, which contravenes Serbian and EU principles and values, such as those of equality between all human beings, as established in the CFREU. Therefore, the sign is considered <b>contrary to public policy</b>.</i></p>

Non-objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
	Class 18: Bags	<i>Although the sign refers to a particular group of people, namely, Black people, it is likely that the general public, in particular the target group, do not perceive it as offensive or derogatory towards the particular group it refers to. Therefore, the sign is <b>not contrary to Article 4(1)(f) TMD.</b></i>

2.5.7 Signs referring/related to criminal activities, crimes against humanity, racist and totalitarian and extremist regimes, organisations and movements

This group comprises, but is not limited to, signs where the verbal or figurative elements, or their combination, refer and/or are related to the following acts, as well as the victims thereof:

- illicit activities (crimes);
- war crimes, which refer to, inter alia, serious violations of the laws and customs applicable in international armed conflicts <sup>(50)</sup> (e.g. inhuman treatment, taking of hostages, attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives);
- crimes against humanity, which refer to acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack <sup>(51)</sup> (e.g. murder, terrorism <sup>(52)</sup>, extermination, enslavement, torture, sexual slavery, the enforced disappearance of persons, the crime of apartheid, and other inhumane acts of a similar character intentionally causing great suffering, or serious injury, to body or to mental or physical health); or
- totalitarian and extremist regimes, organisations and movements (e.g. white supremacy movements, the Ku Klux Klan, movements based on Nazi ideology, etc.).

In principle, **these signs are likely to be considered contrary to both public policy and accepted principles of morality.**

They are likely to be considered **contrary to public policy** whenever **they refer and/or are related to acts that contravene fundamental norms, principles and values on which Serbia, an EU MS and/or the EU is based**, in particular human dignity, freedom, physical integrity, equality and solidarity, respect for persons belonging to minorities, the principle of democracy, and the rule of law, as laid down in Article 2 of the Treaty on European Union and Articles 2, 3 and 6 CFREU, **or when they incite, glorify, trivialise or justify these violations.** These values are indivisible and constitute the spiritual and moral assets of Serbia and the entire EU.

Moreover, organised crime and the other activities listed above are some of the areas of particularly serious crime with a cross-border dimension in which the EU legislature may intervene, as provided for in Article 83 TFEU <sup>(53)</sup>.

These signs are likely to be considered **contrary to accepted principles of morality** whenever they are **perceived as trivialising such acts and/or transmitting a noticeably offensive message towards the**

<sup>(50)</sup> Article 8 of the Rome Statute of the International Criminal Court.

<sup>(51)</sup> Article 7 of the Rome Statute of the International Criminal Court.

<sup>(52)</sup> [Directive \(EU\) 2017/541 on combating terrorism](#); Common Position 2001/931/CFSP on the application of specific measures to combat terrorism (OJ L 344, 28/12/2001, p. 93), later updated by Council Decision (CFSP) 2017/1426 of 04/08/2017, updating the list of persons, groups and entities involved in terrorist acts and subject to restrictive measures: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D1426&from=EN>.

<sup>(53)</sup> 15/03/2018, T-1/17, La Mafia se sienta a la mesa (fig.), EU:T:2018:146, § 36.

**moral values and standards of the Serbian society, a society** of an EU MS and/or the EU.

For a sign under this group to be rejected based on Article 4(1)(f) TMD, an association between the meaning of the sign and the criminal activity/organisation referred to needs to be established in the public's mind. There may be cases in which the **meaning of the sign and/or the message conveyed by it is so strong that it may be rejected irrespective of the goods and/or services applied for.**

Objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
	Class 45: Security services	<p>The figurative element in the sign clearly represents a member of the supremacist terrorist hate group Ku Klux Klan (KKK), due to the white hooded tunic with the group's insignia on it. In addition, the person is waving their right arm in a way that resembles the Nazi salute. The relevant public will perceive the message conveyed by the sign as so strong and heavily associated with racist and criminal actions that it cannot be deemed in any way nuanced. This message is contrary to the indivisible, universal values on which Serbia and the EU are founded, that is to say, human dignity, freedom, physical integrity, equality and solidarity, and the principles of democracy and the rule of law as proclaimed in the CFREU. Therefore, the sign is <b>contrary to public policy</b> even if the group referred to or its victims are not in Serbia or the EU. Additionally, this representation would be perceived as shocking and offensive by the relevant public, and therefore the sign is also <b>contrary to accepted principles of morality</b>. The sign is objectionable <b>for all goods and services</b>.</p>
	Class 25: Clothing	<p>The letters 'SS' and the verbal elements 'RISES AGAIN!', together with the figurative element of a skull, clearly refer to the Schutzstaffel or Protection Squads, a major military organisation under Adolf Hitler and the Nazi Party in Germany, which was declared a criminal organisation because of its direct involvement in committing war atrocities. The relevant public will perceive the message conveyed by the sign as so strong and heavily associated with Nazism and criminal actions that it cannot be deemed in any way nuanced. This message is contrary to the indivisible, universal values on which Serbia and the EU are founded, that is to say, human dignity, freedom, physical integrity, equality and solidarity, and the principles of democracy and the rule of law as proclaimed in the CFREU. Therefore, the sign is <b>contrary to public policy</b>. Additionally, this representation would be perceived as shocking and offensive by the relevant public, and therefore the sign is also <b>contrary to accepted principles of morality</b>. The sign is objectionable <b>for all goods and services</b>.</p>

#### 2.5.8 Signs referring/related to well-known tragic events

This group comprises, but is not limited to, signs where the verbal or figurative elements, or their combination, include and/or are related to:

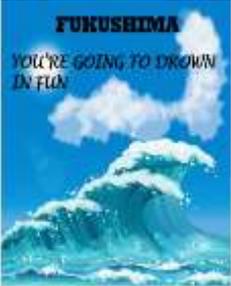
- tragic events,
- the victims that resulted from the tragic event,
- the consequences that resulted from the tragic event.

When assessing a sign that refers or relates to a well-known tragic event, the following factors, inter alia, should be considered in order to determine whether the sign should be objected to based on Article 4(1)(f) TMD:

- the nature of the event;
- the historical and national context of a given situation;
- the sensitivity or perception of the public (e.g. if part of the relevant public perceives the sign as insulting or disrespectful, even if there is no association with the victims);
- the effect or impact on a community (how deeply the tragedy has affected the local public – it should be noted that tragic events can affect people through many generations, even if there are no survivors or living people who were directly affected by the tragedy);
- the time elapsed between the tragic event and the examination of the case; for instance, if a significant amount of time has elapsed, it is possible that the relevant public does not link the sign with the tragedy, or even if they do, they do not feel offended (e.g. the Roman invasion of a country two thousand years ago is unlikely to be offensive to anybody, whereas events closer in time such as World War II or apartheid are much more likely to still be offensive); and
- if the word related to the tragedy has acquired a secondary meaning (e.g. ‘Titanic’, due to the film).

If, after considering the abovementioned factors, it can be concluded that a sign including or related to a well-known tragic event can be perceived as conveying a **clear offensive message, trivialising the nature of a tragic event, taking advantage of the shocking event to attract consumers, or is likely to insult, disparage, degrade and/or offend the victims and the general public**, the sign is **likely to be considered contrary to accepted principles of morality**.

This type of sign may also be considered **contrary to public policy** if it, and/or the message conveyed by it, **contravenes the fundamental norms and principles of Serbia, an EU MS and/or the EU (e.g. human dignity), glorifies, trivialises and/or justifies this violation, or if it affects a fundamental interest of Serbia, the EU MS and/or the EU as a whole**.

Objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
	Class 41: Organisation of entertainment services	<i>The sign makes a clear reference to the tragic earthquake, tsunami and nuclear disaster that took place in Fukushima, Japan in 2011. The combination of the message 'FUKUSHIMA, YOU'RE GOING TO DROWN IN FUN' with the figurative elements is perceived as trivialising the tragedy and its victims and is likely to offend the victims or those close to them. In addition, the fact that the sign is applied for with respect to 'organisation of entertainment services' indicates that the applicant seeks to obtain commercial benefits and take advantage of this shocking event to attract consumers, accentuating the offensive character of the sign. Therefore, the sign is <b>contrary to accepted principles of morality</b>.</i>
<b>AUSCHWITZ COCKTAIL</b>	Class 33: Alcoholic beverages	<i>'Auschwitz' was a Nazi concentration camp situated in German-occupied Poland during World War II. Therefore, referring to 'AUSCHWITZ COCKTAIL' in the</i>

		<p>context of alcoholic beverages is perceived as trivialising the tragedy and its victims. Considering that 'alcoholic beverages' is a wide and popular category of products related mostly to entertainment, it can be concluded that the applicant seems to wish to attract consumers by taking advantage of this shocking event, which is against the fundamental values on which Serbia and the EU are based, that is to say, human dignity, freedom, equality and solidarity, the principles of democracy and the state of law, as proclaimed in the CFREU. Under those circumstances, the sign will be perceived as offensive not only in relation to the victims but also to any person with normal levels of sensitivity and tolerance. The sign is thus <b>contrary to public policy and to accepted principles of morality.</b></p>
	<p>Class 37: Cleaning services</p>	<p>The sign makes a clear reference to the tragic terrorist attacks that took place at Bataclan in Paris in 2015. For 'cleaning services' it will be perceived as trivialising the tragedy and taking advantage of the shocking event to attract consumers, which is clearly against the fundamental values on which Serbia and the EU are based, that is to say, human dignity, freedom, equality and solidarity, the principles of democracy and the state of law, as proclaimed in the CFREU. Under these circumstances, the sign will be perceived as offensive not only in relation to the victims of those attacks and their relatives, but also to any person with normal levels of sensitivity and tolerance. Therefore, the sign is <b>contrary to both public policy and accepted principles of morality.</b></p>

Conversely, if the sign, despite referring to a well-known tragic event, is **only describing a circumstance in a manner that is not likely to cause offence, trivialise or take advantage of the tragedy**, the sign is **unlikely to be considered contrary to accepted principles of morality.**

Non-objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
	<p>Class 41: Educational services</p>	<p>The combination of the message 'CHERNOBYL DISASTER EXPERIENCE' with the figurative element in relation to 'educational services' makes clear reference to the Chernobyl nuclear disaster of 1986, but it will not be perceived as trivialising or taking advantage of this shocking event to attract consumers. Moreover, considering the time that has elapsed since the tragedy, it will not be perceived as offensive. Therefore, the sign is <b>not objectionable under accepted principles of morality.</b></p>

Similarly, if the goods and/or services applied for **aim to educate, overcome and/or raise awareness** about the tragedy and do not convey any offensive message, the sign is **less likely to be refused under accepted principles of morality.**

Non-objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
<b>COVID ARMY</b>	Class 42: Scientific investigation	<i>The sign in relation to the services applied for will be perceived as an effort to overcome and raise awareness of the COVID-19 pandemic. In addition, it does not contain an offensive and/or shocking message towards a particular group intended to attract consumers' attention. Therefore, the sign is <b>not objectionable under accepted principles of morality</b>.</i>
	Class 41: Museums	<i>The figurative elements of the sign show the typical railway wagon used to transport prisoners in the foreground and, in the distance, the buildings of an extermination camp, together with word element 'HOLOCAUST'. Considering the services applied for, which are intended to educate consumers and raise their awareness, the sign has a symbolic and neutral connotation without any offensive or shocking message. Therefore, the sign is <b>not contrary to accepted principles of morality</b>.</i>

2.5.9 Signs including/related to historical figures, national/EU symbols and/or personalities held in high esteem

This group comprises, but is not limited to, signs where the verbal or figurative elements, or their combination, include and/or are related to:

- historical figures,
- figures that are considered national or EU symbols, and/or
- personalities that are held in high esteem in all or part of Serbia, the EU, or in an EU MS.

In principle, these signs are likely to be refused under **public policy** and/or **accepted principles of morality** if they refer to a historical figure that has negative connotations (e.g. Hitler) and **clearly promote and/or glorify such a figure, since they could hurt the sensitivity of part of the relevant society and/or could affect an interest which Serbia, the EU and/or the EU Member State(s) concerned considers to be fundamental in accordance with their own systems of principles and values (e.g. human dignity and the principle of democracy).**

Moreover, the **banal use of signs with a highly positive connotation** (e.g. national symbols with spiritual and political value) **can also be perceived as offensive** under Article 4(1)(f) TMD when the public's sensitivity regarding that symbol is high <sup>(54)</sup>.

<sup>(54)</sup> In the 'ATATURK' case (decision of 17/09/2012, R 2613/2011-2) it was held that the banal use of signs with a highly positive connotation, like 'ATATURK', can be offensive under Article 7(1)(f) EUTMR. 'ATATURK' is a national symbol of spiritual and political value for the general European public of Turkish origin.

Objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
<b>NELSON MANDELA</b>	Class 16: Toilet Paper	<i>The banality of the goods applied for trivialises the historical figure of Nelson Mandela, who received the Nobel Peace Prize for peacefully ending the apartheid regime and laying the foundation for democracy in South Africa. It is disrespectful to the high esteem in which he is held by the public in Serbia and the EU. Consequently, the sign should be refused under <b>accepted principles of morality.</b></i>

Conversely, when the sign refers to a historical figure that is perceived as having 'positive connotations' (e.g. Mahatma Gandhi), and does **not promote or glorify any offensive ideas that could be seen as shocking and/or do not affect an interest which Serbia, the EU and/or the EU Member State(s) concerned considers to be fundamental in accordance with their own systems of principles and values, the sign is unlikely to be refused** under this article.

Non-objectionable under Article 4(1)(f) TMD		
Sign	Goods and services	Reasoning
	Class 41: Museums	<i>The sign consists of a representation of Mahatma Gandhi's face, a historical figure that is perceived as having positive connotations. The sign, in combination with the services applied for, does not promote or glorify any offensive ideas that could be seen as shocking, nor does it affect any fundamental interest of Serbia, the EU and/or a MS. Thus, the sign is <b>not objectionable under Article 4(1)(f) TMD.</b></i>

## APPENDIX

Potentially relevant legal sources in relation to freedom of expression



**PRACTICE**

**TRADE MARKS CONTRARY TO PUBLIC  
POLICY OR TO ACCEPTED  
PRINCIPLES OF MORALITY**

**APPENDIX – POTENTIALLY RELEVANT  
LEGAL SOURCES IN RELATION TO  
FREEDOM OF EXPRESSION**

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## **APPENDIX – POTENTIAL RELEVANT LEGAL SOURCES IN RELATION TO FREEDOM OF EXPRESSION**

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## 1 PURPOSE OF THE DOCUMENT

The Practice Paper on “*Trade marks contrary to public policy or to accepted principles of morality*” (PP14) does not analyse how an assessment should be performed of the impact of freedom of expression on the application of Article 4(1)(f) of Directive (EU) No 2015/2436 of the European Parliament and of the Council of 16 December 2015 relating to trade marks (TMD). This matter is not currently settled in EU trade mark law. Therefore, this annex has been drawn up to provide information that is current as of 7 September 2023 on potentially relevant legal sources for the application of Article 10 European Convention on Human Rights and Article 11 Charter of Fundamental Rights of the European Union in relation to the application of Article 4(1)(f) of the TMD.

Section 2 provides relevant legal sources to be considered in the assessment of this ground for refusal.

In addition, relevant case-law has been researched, with special attention to the guide published by the European Court of Human Rights on the general applicability of Article 10 ECHR, which provides key principles in this area and the relevant precedents and case-law.

In this regard, section 3 of this document contains extracts of case-law from the European Court of Justice and the European Court of Human Rights that have been selected based on their relevance for the subject matter of the Practice on “*Trade marks contrary to public policy or to accepted principles of morality*”. For a deeper understanding of the topic and the case-law mentioned below, it is advised to refer to the abovementioned guide and to read the case-law cited in this annex in full.

## 2 LEGAL FRAMEWORK

### 2.1 European Union law

- **Directive (EU) 2015/2436 approximating the laws of the Member States relating to trade marks (TMD) <sup>(55)</sup>**

Recital 27 of the preamble

... this Directive should be applied in a way that ensures full respect for fundamental rights and freedoms, and in particular the freedom of expression.

- **Charter of Fundamental Rights of the European Union (CFREU) <sup>(56)</sup>**

Article 11 – Freedom of expression and information:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

2. The freedom and pluralism of the media shall be respected.

Article 16 – Freedom to conduct a business:

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<sup>(55)</sup> [Directive \(EU\) No 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States](#)

<sup>(56)</sup> [Charter of Fundamental Rights of the European Union](#)

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

#### Article 17 – Right to property

2. Intellectual property shall be protected.

#### - **European Convention on Human Rights (ECHR) <sup>(57)</sup>**

##### Article 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

## 2.2 Other related instruments

#### - Guide on Article 10 of the European Convention on Human Rights

The [Guide on Article 10 of the European Convention on Human Rights – Freedom of Expression](#) is updated regularly. Although not binding on the European Court of Human Rights, this guide contains a step-by-step analysis of freedom of expression in the cases conducted by this court, as well as numerous examples of casuistry and relevant case-law to illustrate its interpretation in different areas/fields, to inform legal practitioners.

The most relevant points of this guide in relation to the PP14 topic, that is, trade marks contrary to public policy or to accepted principles of morality, are the following:

- I Introduction.
- I(B) General considerations on Article 10 in the Court's case-law.
- II Specific questions on the assessment of admissibility in cases concerning Article 10 of the Convention.
- III The Court's examination of Article 10 cases: a step-by-step analysis.
- XI Freedom of expression and the legitimate aims of national security, territorial integrity or public safety, the prevention of disorder or crime.
- XII Freedom of expression and the protection of health or morals.
- XIV Pluralism and freedom of expression.
- XIV(F) Pluralism and the freedom of expression of minorities.

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<sup>(57)</sup> [European Convention on Human Rights](#)

### 3 RELEVANT CASE-LAW

#### 3.1 Case-law from the European Court of Justice

##### 3.1.1 *Fack Ju Göhte case* <sup>(58)</sup>

In this case, the trade mark applied for was the word sign 'Fack Ju Göhte', which is the title of one of the most successful films of 2013 in Germany.

This sign was refused registration on the basis of Article 7(1)(f) of Regulation No 207/2009, read in conjunction with Article 7(2) of that regulation. The subsequent appeals were dismissed successively by the EUIPO Boards of Appeal and by the General Court. However, the Court of Justice set aside the judgment of the General Court and annulled the EUIPO's decision refusing the trade mark.

This judgment is significant because it acknowledges that freedom of expression must be considered, as required by recital 21 of Regulation (EU) 2017/1001 on the EU trade mark <sup>(59)</sup> (and in line with recital 27 of the TMD).

For these conclusions, contextual elements were also taken into account, such as the following citations from the *Fack Ju Göhte* judgment:

... great success of the comedy of the same name amongst the German-speaking public at large and the fact that its title does not appear to have caused controversy, as well as the fact that access to it by young people had been authorised and that the Goethe Institute – which is the cultural institute of the Federal Republic of Germany, active worldwide and tasked, inter alia, with promoting knowledge of the German language – uses it for educational purposes.

6. Recital 21 of Regulation 2015/2424 states:

(21) ... Furthermore, this Regulation should be applied in a way that ensures full respect for fundamental rights and freedoms, and **in particular the freedom of expression**.

7. **Recital 21 of Regulation 2017/1001 reproduces verbatim** the wording of recital 21 of Regulation **2015/2424** set out in the preceding paragraph.

56. Lastly, it should also be added that, contrary to the General Court's finding in paragraph 29 of the judgment under appeal, that 'there is, in the field of art, culture and literature, a constant concern to preserve freedom of expression which does not exist in the field of trade marks', freedom of expression, enshrined in Article 11 of the Charter of Fundamental Rights of the European Union, must, as [the] EUIPO acknowledged at the hearing and as the Advocate General states in points 47 to 57 of his Opinion, be taken into account when applying Article 7(1)(f) of Regulation No 207/2009. Such a finding is corroborated, moreover, by recital 21 of **Regulation No 2015/2424**, which amended Regulation No 207/2009 and recital 21 of **Regulation 2017/1001**, both of which **expressly emphasise** the need to apply those regulations in such a way as to ensure full respect for **fundamental rights** and freedoms, **in particular freedom of expression**.

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<sup>(58)</sup> 27/02/2020, C-240/18 P, *Fack Ju Göhte*, EU:C:2020:118.

<sup>(59)</sup> [Regulation \(EU\) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark](#)

47. **Freedom of expression does indeed play a role in trade mark law.**

48. First, respect for fundamental rights constitutes a condition of the lawfulness of any EU measure. The scope of application of the Charter of Fundamental Rights of the European Union ('the Charter') and the **fundamental rights guaranteed therein extends to any activity or omission of EU institutions and bodies. [...] The same must naturally hold true in the field of trade marks for activities and omissions of EU bodies, such as [the] EUIPO.**

49. Second, the commercial nature of a potential activity is no reason to limit or even exclude fundamental rights protection. [...] It might be recalled that the European Court of Human Rights ('ECtHR') **has stated that freedom of expression, guaranteed in Article 10 ECHR, applies independently of the type of message, including when a commercial advertisement is concerned.** [...] It has applied freedom of expression specifically to evaluating restrictions imposed by national legislation on trade marks or other forms of advertisement. [...]

50. Third, the applicability of **freedom of expression in the field of trade marks was explicitly confirmed in the preamble to Regulation (EU) 2015/2424 modifying Regulation No 207/2009 and is recognised today in Regulation 2017/1001.** [...].

51. Fourth, and on a rather subsidiary note, such an understanding of the law is also **consistent with the previous case-law of the General Court (24) and with [the] EUIPO's own decision-making practice.** [...].

52. Thus, **freedom of expression clearly applies in the field of trade mark law.** ...

56. In sum, although **it is not a primary goal of trade mark law**, freedom of expression clearly remains present therein. Seen in this light, the statement in question of the General Court in paragraph 29 of its reasoning is perhaps intended to convey a slightly different idea: not that there is no role whatsoever for freedom of expression in trade mark law, but rather that, **in contrast to the fields of arts, culture, and literature, the weight to be given to freedom of expression in the area of trade mark law may be somewhat different, perhaps slightly lighter, in the overall balancing of the rights and interests present.**

57. ... although freedom of expression, as well as other fundamental rights potentially at stake, **must be taken into account in the overall balancing exercise**, the protection of freedom of expression **is not the primary goal of trade mark protection.**

### 3.2 Case-law from the European Court of Human Rights

As the previously mentioned guide of the ECtHR states, the applicability of Article 10 of the Convention 'also includes information of a commercial nature'. In this regard, the present document particularly refers to the following judgments – although it is advisable to consult, in parallel, the *Guide on Article 10 of the European Convention on Human Rights – Freedom of expression*:

#### 3.2.1 *Sekmadienis Ltd. v Lithuania, Appl. No 69317/14, 30 January 2018* <sup>(61)</sup>

This case refers to an advertisement campaign featuring models that resemble religious figures and which

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<sup>(60)</sup> [Opinion Of Advocate General Bobek](#), delivered on 2 July 2019, 'Trade mark protection and freedom of expression', § 45-57.

<sup>(61)</sup> <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-180506%22%7D>

contains the following texts: 'MOTHER OF GOD, WHAT A DRESS'; 'Jesus, Mary What A Style' and 'JESUS, WHAT A JEANS'. The complaint argued that the advertisements degraded religious symbols, offended the feelings of religious people and created 'a danger that society might lose the necessary sense of sacredness and basic respect for spirituality'. As a result, the company was fined by the Lithuanian authorities on account of the fact that the advertisements that it had displayed had been held to be contrary to public morals.

In this case, freedom of expression was applied to advertisements that have a purely commercial purpose.

The ECtHR concluded that the Lithuanian authorities had violated the right to freedom of expression because they failed to strike a fair balance between, on the one hand, the protection of public morals and the rights of religious people, and, on the other hand, the applicant company's right to freedom of expression.

## 2. The Court's assessment

### (a) Whether there was an interference

[...]

#### (ii) Application of the above principles in the present case

66. In the present case, the impugned interference was based on Article 4 § 2(1) of the Law on Advertising which prohibited advertising that 'violates public morals' (see paragraph 34 above). **The Court agrees with the Government that the concept of public morals is necessarily broad and subject to change over time, and as a result, a precise legal definition may not be possible** (see paragraph 53 above). **It considers that it would be unrealistic to expect the national legislature to enumerate an exhaustive list of actions which violate public morals** (see, mutatis mutandis, Kudrevičius and Others v Lithuania [GC], No 37553/05, § 113, ECHR 2015).

[...]

### (d) Whether the interference was necessary in a democratic society

#### (i) Relevant general principles

70. **The Court has consistently held that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'. As enshrined in Article 10, freedom of expression is subject to exceptions which must, however, be construed strictly, and the need for any restrictions must be established convincingly** (see Von Hannover v Germany (No 2) [GC], Nos 40660/08 and 60641/08, § 101, ECHR 2012; Bédat v Switzerland [GC], No 56925/08, § 48, ECHR 2016; and Satakunnan Markkinapörssi Oy and Satamedia Oy, cited above, § 124).

71. **The adjective 'necessary', within the meaning of Article 10 § 2, implies the existence of a 'pressing social need'. The Contracting States have a certain**

**margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a ‘restriction’ is reconcilable with freedom of expression as protected by Article 10** (see *Mouvement raëlien suisse v Switzerland* [GC], No 16354/06, § 48, ECHR 2012 (extracts); *Animal Defenders International v the United Kingdom* [GC], No 48876/08, § 100, ECHR 2013 (extracts); and *Bédat*, cited above, § 48).

**72. The Court’s task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was ‘proportionate to the legitimate aim pursued’ and whether the reasons adduced by the national authorities to justify it are ‘relevant and sufficient’. In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts** (see *Mouvement raëlien Suisse*, cited above, § 48; *Morice v France* [GC], No 29369/10, § 124, ECHR 2015; and *Medžlis Islamske Zajednice Brčko and Others v Bosnia and Herzegovina* [GC], No 17224/11, § 75, 27 June 2017).

**73. The Court further reiterates that the breadth of the Contracting States’ margin of appreciation varies depending on a number of factors, among which the type of speech at issue is of particular importance. It has consistently held that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on matters of public interest** (see *Baka v Hungary* [GC], No 20261/12, § 159, ECHR 2016, and *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, § 167). **However, a wider margin of appreciation is generally available to the Contracting States when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or, especially, religion** (see *Wingrove*, cited above, § 58, and *Murphy v Ireland*, No 44179/98, § 67, ECHR 2003-IX (extracts)). Similarly, States have a broad margin of appreciation in the regulation of speech in commercial matters or advertising (see *Markt intern Verlag GmbH and Klaus Beermann v Germany*, 20 November 1989, § 33, Series A No 165; *Hertel*, cited above, § 47; and *Mouvement raëlien Suisse*, cited above, § 61).

**74. The Court lastly reiterates that, as paragraph 2 of Article 10 expressly recognises, the exercise of the freedom of expression carries with it duties and responsibilities. Amongst them, in the context of religious beliefs, is the general requirement to ensure the peaceful enjoyment of the rights guaranteed under Article 9 to the holders of such beliefs including a duty to avoid as far as possible an expression that is, in regard to objects of veneration, gratuitously offensive to others and profane** (see *Otto-Preminger-Institut v Austria*, 20 September 1994, § 49, Series A No 295-A; *Murphy*, cited above, § 65; *İ.A. v Turkey*, No 42571/98, § 24, ECHR 2005-VIII; *Giniewski v France*, No 64016/00, § 43, ECHR 2006-I; and *Klein*, cited above, § 47).

(ii) Application of the above principles in the present case

[...]

78. **The Court has previously held that it is not to be excluded that an expression, which is not on its face offensive, could have an offensive impact in certain circumstances (see Murphy, cited above, § 72). It was therefore for the domestic courts to provide relevant and sufficient reasons why the advertisements, which, in the Court's view, were not on their face offensive, were nonetheless contrary to public morals (see, mutatis mutandis, VgT Verein gegen Tierfabriken v Switzerland, No 24699/94, §§ 75-76, ECHR 2001-VI). The Court also notes that, as submitted by the Government, not every use of religious symbols in advertising would violate Article 4 § 2(1) of the Law on Advertising (see paragraph 53 above), which means that at least some explanation as to why the particular form of expression chosen by the applicant company was contrary to public morals was required by domestic law as well.**

[...]

81. The Court further observes that some of the authorities gave significant weight to the fact that approximately one hundred individuals had complained about the advertisements (see paragraphs 18 and 25 above). It has no reason to doubt that those individuals must have been genuinely offended. However, **the Court reiterates that freedom of expression also extends to ideas which offend, shock or disturb (see the references provided in paragraph 70 above). It also reiterates that in a pluralist democratic society those who choose to exercise the freedom to manifest their religion cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith (see Otto-Preminger-Institut, § 47, and İ.A. v Turkey, § 28, both cited above; see also the position of the Venice Commission in paragraph 49 above). In the Court's view, even though the advertisements had a commercial purpose and cannot be said to constitute 'criticism' of religious ideas (see paragraph 76 above), the applicable principles are nonetheless similar (in this connection see in particular the findings of the domestic authorities that the advertisements 'encourage[d] a frivolous attitude towards the ethical values of the Christian faith' in paragraph 18 above).**

82. ... In the Court's view, it cannot be assumed that everyone who has indicated that he or she belongs to the Christian faith would necessarily consider the advertisements offensive, and the Government have not provided any evidence to the contrary. Nonetheless, even assuming that the majority of the Lithuanian population were indeed to find the advertisements offensive, **the Court reiterates that it would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority. Were this so, a minority group's rights to, inter alia, freedom of expression would become merely theoretical rather than practical and effective as required by the Convention (see, mutatis mutandis, Barankevich v Russia, No 10519/03, § 31, 26 July 2007; Alekseyev v Russia, Nos 4916/07 and 2 others, § 81, 21 October 2010; and Bayev and Others, cited above, § 70).**

83. Accordingly, **the Court concludes that the domestic authorities failed to strike a fair balance between, on the one hand, the protection of public morals and the rights of religious people, and, on the other hand, the applicant company's right to freedom of expression.** The wording of their decisions – such as ‘in this case the game has gone too far’ (see paragraph 11 above), ‘the basic respect for spirituality is disappearing’ (see paragraph 15 above), ‘inappropriate use [of religious symbols] demeans them [and] is contrary to universally accepted moral and ethical norms’ (see paragraph 25 above) and ‘religious people react very sensitively to any use of religious symbols or religious persons in advertising’ (see paragraphs 11, 13, 15 and 18 above) – demonstrate that **the authorities gave absolute primacy to protecting the feelings of religious people, without adequately taking into account the applicant company's right to freedom of expression.**

**84. There has therefore been a violation of Article 10 of the Convention.**

3.2.2 *Dor v Romania, Appl. No 55153/12, 25 August 2015* <sup>(62)</sup>

This case referred to the application of the sign ‘CRUCIFIX’ for services in Classes 36; 41; 42 and 45 before the Romanian Intellectual Property Office. The Office refused registration on the grounds of public order and morality, considering that religious symbols could only be used in connection with religious activities and by authorised persons, which was not the case for the sign in question, based on the services the sign was sought for.

The ECtHR noted that the case does not concern the manifestation of the applicant's freedom of thought, conscience or religion, but the commercial use of a trade mark. It concluded, *inter alia*, that the rejection of the trade mark application amounts to an interference with the applicant's exercise of his freedom of expression. Such interference violates Article 10 unless it is ‘prescribed by law’, pursues a legitimate aim under Article 10(2) ECHR, and is ‘necessary in a democratic society’.

In Law

38. The applicant submits that the choice of name and graphic representation of the mark ‘CRUCIFIX’ falls within the scope of his freedom of thought, conscience and religion and that by refusing to register it the domestic authorities have infringed his freedom of expression.

39. The Court notes that the present case does not concern the manifestation of the applicant's freedom of thought, conscience or religion, but the commercial use of a trade mark. In these circumstances, the Court considers it appropriate to examine the application solely in the light of Article 10 of the Convention. This provision reads as follows:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers ...

2. The exercise of these freedoms, which carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interests of

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<sup>(62)</sup> <https://hudoc.echr.coe.int/eng#%7B%22languageisocode%22:%5B%22FRE%22%5D,%22appno%22:%5B%2255153/12%22%5D,%22documentcollectionid%22:%5B%22ADMISSIBILITY%22%5D,%22itemid%22:%5B%22001-157422%22%5D%7D>

national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

A. Whether there was an interference with the applicant's freedom of expression

41. The Court recalls that advertising is a means for citizens to learn about the characteristics of the services and goods offered to them (*Casado Coca v Spain*, judgment of 24 February 1994, Series A, No 285-A, p. 13, § 51).

42. In the present case, by applying for registration of the trade mark 'CRUCIFIX', the applicant intended to make known to the public the services it wished to provide under that mark, distinguishing itself from those of other competing undertakings. **In that context, the contested mark was an important element of its advertising and commercial strategy.**

43. **Recalling that Article 10 of the Convention guarantees freedom of expression to 'everyone', irrespective of the type of message conveyed** (see *Groppera Radio AG and Others v Switzerland*, 28 March 1990, § 55, Series A No 173), **even where the advertisement is commercial** (see *Casado Coca*, cited above, §§ 36-37) **or where the aim is to make a profit** (see *Autronic AG v Switzerland*, 22 May 1990, § 47, Series A No 178), **the Court considers that, in view of the advertising nature of the mark, the applicant's application falls within the scope of protection under Article 10 § 1 of the Convention.**

44. **The rejection of the application therefore amounts to an interference with the applicant's exercise of his freedom of expression. Such interference violates Article 10 unless it is 'prescribed by law', directed to an aim or aims which are legitimate under Article 10 § 2 and 'necessary' in a democratic society to achieve them.**

B. Whether the interference was prescribed by law

**46. The Court therefore considers that the interference at issue was 'provided for by law', namely Article 5 § f) of Law No 84/1998.**

C. Whether the interference pursued a legitimate aim

47. **The Court considers that the interference pursued a legitimate aim, namely the protection of the public against fraudulent commercial practices and compliance with consumer law.** It follows that the measure at issue pursued the legitimate aims of 'protecting the rights of others' and 'preventing offences' within the meaning of Article 10 § 2.

D. Whether the alleged interference was necessary in a democratic society

48. In its Grand Chamber judgment in the case of *Mouvement raëlien suisse v Switzerland* [GC], No 16354/06, §§ 59-63, ECHR 2012 (extracts), the Court recalled its case-law concerning the restrictions that may be placed on speech that is more akin to commercial than political speech.

49. **In such cases, the national authorities are, in principle, in a better position than the international court to decide whether a ‘restriction’ or ‘sanction’ is ‘necessary’ to achieve the legitimate aims they are pursuing, thanks to their direct and constant contacts with the country’s population** (Müller and Others v Switzerland, 24 May 1988, § 35, Series A No 133).

50. In exercising its supervisory jurisdiction, it is not the Court’s task to take the place of the national courts, but it is for it to ascertain, in the light of the case as a whole, whether the decisions they have taken under their discretionary powers are compatible with the Convention provisions relied on (Axel Springer AG v Germany [GC], No 39954/08, § 86, 7 February 2012).

51. **The scope of the margin of appreciation available to Contracting States in assessing the necessity and extent of interference is greater where they regulate freedom of expression in areas likely to offend intimate personal convictions of a moral or, more particularly, religious nature** (Murphy v Ireland, No 44179/98, § 67, ECHR 2003-IX (extracts)). **States also have a wide margin of appreciation in regulating commercial and advertising speech** (see Markt Intern Verlag GmbH and Klaus Beermann v Germany, 20 November 1989, § 33, Series A No 165, and Casado Coca, cited above, § 50).

52. Advertising may be subject to restrictions designed, inter alia, to prevent unfair competition and misleading advertising. In certain contexts, even the publication of objective and truthful advertising messages could be subject to limitations, aimed at respecting the rights of others or based on the particularities of a given commercial activity or profession (Casado Coca, cited above, § 51).

53. In the present case, the Court notes that **the applicant has in no way demonstrated the existence of a link between the services, in particular legal services, which he intended to provide to the public under the contested mark and the religious symbol of the crucifix. On the contrary, he confined himself to asserting that such a choice fell within the scope of his freedom of thought, conscience and religion, as well as his freedom of expression.**

54. In these circumstances, **the Court sees no reason to consider that the domestic courts exceeded their margin of appreciation in finding that there was a risk of misleading the public and in giving precedence to the public’s right to be protected against possible misleading advertising over the applicant’s right to freedom of expression.**

56. **In the light of these factors and having regard to the particularly wide margin of appreciation available to the domestic authorities, the Court considers that the interference at issue was not disproportionate to the aim pursued.**

### 3.2.3 *Vajnai v Hungary, Appl. No 33629/06, 8 July 2008* <sup>(63)</sup>

This case refers to the use of a symbol, namely a five-pointed red star, by the Vice-President of the Worker’s Party of Hungary, during a legally convened demonstration. Based on the former use of the symbol and its public meaning, the Pest Central District Court sanctioned the applicant in accordance with the Criminal Code of Hungary. The action of wearing the five-pointed red star symbol was considered by the Hungarian Court to be an offence of using a totalitarian symbol.

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<sup>(63)</sup> <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-87404%22%7D>

The ECtHR noted that the red star cannot only be understood as an exclusive representation of communist totalitarian rule, as it also symbolises the international workers' movement. It also pointed out that the applicant wore the red star symbol at a legally convened demonstration without any intention of defying the rule of law. The ECtHR concluded that it is necessary to distinguish between an expression which is shocking and offensive from that which forfeits protection under Article 10 ECHR, therefore, banning the use of this symbol would be too broad considering the multiple meanings of the red star.

A. Whether there was a violation of human rights.

52. The Court is mindful of the fact that the well-known mass violations of human rights committed under communism discredited the symbolic value of the red star. However, in the Court's view, it cannot be understood as representing exclusively communist totalitarian rule, as the Government have implicitly conceded (see paragraph 40 above). It is clear that this star also still symbolises the international workers' movement, struggling for a fairer society, as well certain lawful political parties active in different Member States.

B. Whether the applicant has defied the rule of law by using the symbol.

53. Moreover, the Court notes that the Government have not shown that wearing the red star exclusively means an identification with totalitarian ideas, especially when seen in the light of the fact that the applicant did so at a lawfully organised, peaceful demonstration in his capacity as the vice-president of a registered left-wing political party, with no known intention of participating in Hungarian political life in defiance of the rule of law. In this connection, the Court emphasises that it is only by a careful examination of the context in which the offending words appear that one can draw a meaningful distinction between shocking and offensive language which is protected by Article 10 of the Convention and that which forfeits its right to tolerance in a democratic society.

C. Whether the interference is necessary in a democratic society.

54. The Court therefore considers that the ban in question is too broad in view of the multiple meanings of the red star. The ban can encompass activities and ideas which clearly belong to those protected by Article 10, and there is no satisfactory way to sever the different meanings of the incriminated symbol. Indeed, the relevant Hungarian law does not attempt to do so. Moreover, even if such distinctions had existed, uncertainties might have arisen entailing a chilling effect on freedom of expression and self-censorship.

55. As regards the aim of preventing disorder, the Court observes that the Government have not referred to any instance where an actual or even remote danger of disorder triggered by the public display of the red star had arisen in Hungary. In the Court's view, the containment of a mere speculative danger, as a preventive measure for the protection of democracy, cannot be seen as a 'pressing social need'. In any event, apart from the ban in question, there are a number of offences sanctioned by Hungarian law which aim to suppress public disturbances even if they were to be provoked by the use of the red star (see paragraph 15 above).