

# World Trademark Review *Daily*

**Figurative mark consisting of coat of arms of Soviet Union rejected  
European Union - Edwards Angell Palmer & Dodge**

**Examination/opposition  
International procedures**

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The Second Board of Appeal of the [Office for Harmonization in the Internal Market](#) (OHIM) has [dismissed](#) an appeal by Couture Tech Ltd against OHIM's refusal to register a figurative mark consisting of the coat of arms of the Soviet Union (Case R 1509/2008-2, March 5 2010).

In the process of selecting their brands, and in an effort to impress the consumers, marketers can sometimes exceed the limits set by the EU legislation. One of these limits is the 'public policy and accepted principles of morality' doctrine. Since no specific test has been established, OHIM is called upon to determine whether a mark can induce public disorder or whether it is simply distasteful. The issue of public policy and morality arises less frequently at the European level, as most of the marks are usually refused on distinctiveness or descriptiveness grounds. However, when the issue arises, it reveals OHIM's sensitivity to the registration and protection of offensive marks.

In the present case, Couture Tech applied to register a figurative mark as a Community trademark (CTM) in Classes 3, 14, 18, 23, 26 and 43 of the [Nice Classification](#). The mark consisted of the exact representation of the coat of arms of the Soviet Union, including the red star, sickle and hammer, and 15 ribbons containing the motto "proletariats of the world, unite!" in all the 15 languages of the Soviet Socialist Republics of the Soviet Union. This emblem was the official symbol of the Soviet Communist party, which ruled the country according to the Soviet constitution.

The application was refused by the OHIM examiner on the grounds that the mark was contrary to public policy and accepted principles of morality under Article 7(1)(f) of the [Community Trademark Regulation](#) (207/2009). Couture Tech appealed, claiming, among other things, that the registration of a former symbol of the Soviet Union had neither been banished nor prohibited in any member state in the European Union, nor had its use been declared immoral, illegal or unlawful. One of the basic arguments of Couture Tech was also that the same mark had already been registered as a CTM in different classes.

The appeal was dismissed. The Board of Appeal held that the registration of the mark would be contrary to the public policy, based on how it would be perceived in, at least, a part of the European Union. Under the laws of Hungary and Latvia, the Soviet symbols have been banned from use and display at public meetings. The board also stated that, for an application to be rejected, it is sufficient for the ground for refusal to pertain in only part of the European Union, notwithstanding the population percentage.

The fact that the same mark had already been registered in the past was characterized as a "mistake" by the board. It was thus confirmed that the registrability of a sign as a CTM must be assessed solely on the basis of the relevant EU legislation. Therefore, although consistency in decision-making was highly desirable, the legality of the decisions of OHIM should be assessed purely on the basis of the regulation, and not on the basis of its previous practice.

The case is important in that it provides some additional guidance as to where the boundary lies between what is registrable and what is not. As this decision indicates, the existence of an absolute ground of refusal, even in only a part of the European Union, is sufficient to render a mark unregistrable. Also important is the fact that OHIM is not bound by its previous decisions, but only by the EU legislation, regardless of its aim for consistency.

The balance of the freedom of expression and the need to protect accepted principles of morality is difficult to achieve. In any case, reasonableness should prevail. However, before investing in a new brand, marketers should be confident that their mark can be registered and that no absolute grounds of refusal exist, even in only one member state.

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