



October 2024

EXPLAINER: COLOUR MARKS

LOOKING FOR A RAINBOW?

Recent developments
regarding colour marks

**Includes interesting
recent cases!**





A colour can be registered as a trademark, if the colour has acquired distinctiveness through use in the relevant territory. The threshold to prove this is high in view of the limited availability of colours.

**See CJEU 6 May 2003,
C-104/01 Libertel**



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Recently the General Court EU ruled that Veuve Clicquot failed to demonstrate that the colour orange acquired distinctiveness through use for champagne in the European Union. Although, convincing evidence could be provided for several Member States, it did not extend to Greece and Portugal.

See General Court EU 6 March 2024, T-652/22 [Veuve Clicquot](#).¹

¹Appeal lodged.



Recently BOIP invalidated the Benelux colour mark **Magenta** for telecommunication services. Acquired distinctiveness had not been proven throughout the Benelux. BOIP 23 August 2024, Magenta 1, Magenta 2, Magenta 3.²

²Appeal period pending.



A colour mark which is registered as a Benelux trademark is the colour yellow for chocolate milk. Recently the trademark holder successfully opposed to the following application for chocolate related products.



BOIP 28 June 2024, Cacaolat.



COLOUR COMBINATIONS

As for the registration of colour combinations the general principles can be found in the Heidelberg decision.

See CJEU 24 June 2004,
C-49/02 Heidelberg



A very interesting pending case concerns the colour combination blue and green for oil and vehicle service stations.

The major question in this case is whether colour combinations should be subject to the same high threshold as single colour marks. (Pending case T-38/24, OMV).

INTA and MARQUES filed statements in intervention with the General Court.



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have a colourful day!

