



NON-TRADITIONAL MARKS IN THE DIGITAL AGE

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- 2. Non-traditional marks: distinctiveness – practical examples**
- 3. Other grounds: descriptiveness, genericness and deceptiveness**

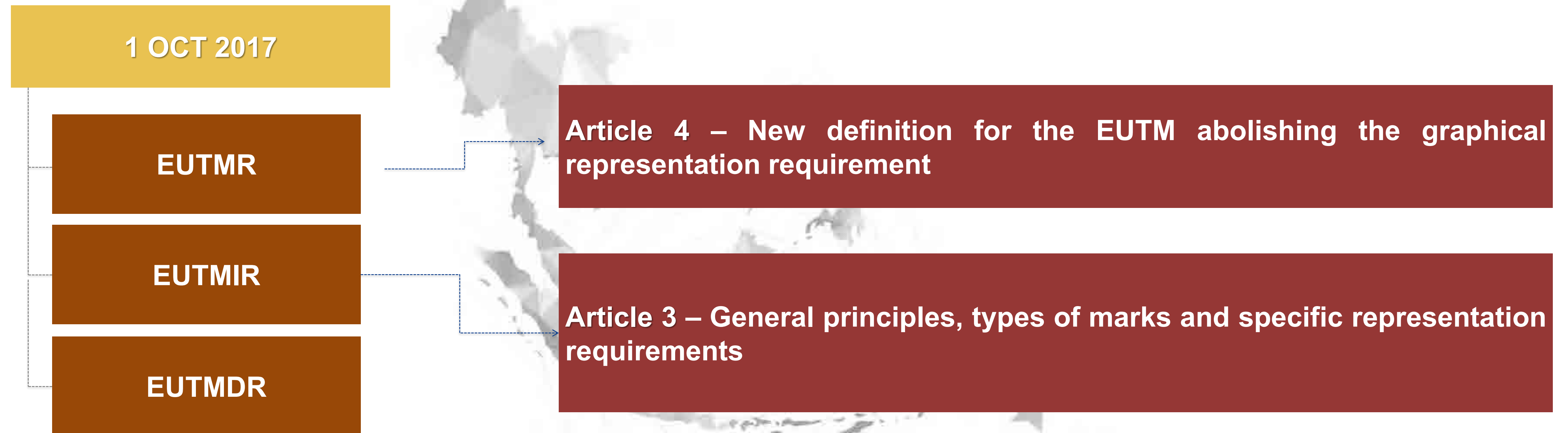


Non-traditional marks in the Digital Age

INTRODUCTION – TYPES OF MARKS



Types of marks: the current legal framework



Types of marks: the current legal framework

Article 3(1) EUTMIR 2018/626

Representation of the trade mark

The TM shall be **represented in any appropriate form using generally available technology**, as long as it can be reproduced on the Register in a **clear, precise, self-contained, easily accessible, intelligible, durable and objective manner** so as to enable the competent authorities and the public to determine with clarity and precision the subject matter of the protection afforded to its proprietor.

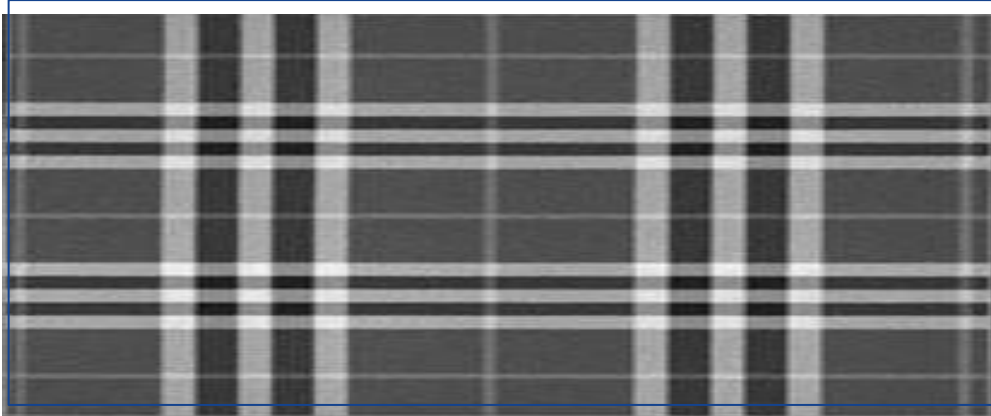
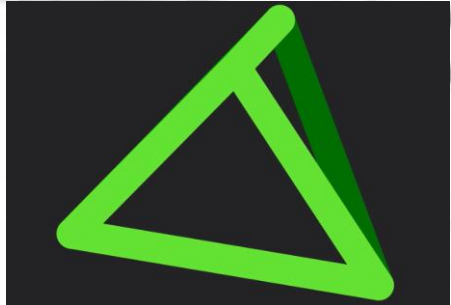


Types of marks: the current legal framework

5 existing trade mark types redefined

WORD	<i>Figurative</i>			
Word	Figurative	Shape	Colour	Sound

5 new trade mark types added

				
Position	Pattern	Motion	Multimedia	Hologram

Non-traditional mark in the Digital Age

Unconventional trade marks:

- Sound
- Motion
- Multimedia
- Hologram
- **'Other' types**

Common Communication on the Representation of
New Types of Marks 01/06/2027

CP11 New Types of Marks

Stats: EUTM Filings

	2023	%
3D	499	0.28%
Colour	23	0.01%
Figurative	79,409	45.19%
Hologram	0	0.00%
Motion	48	0.03%
Multimedia	15	0.01%
Other	77	0.04%
Pattern	40	0.02%
Position	63	0.04%
Sound	34	0.02%
Unknown	7	0.00%
Word Mark	95,500	54.35%
Σ	175,715	100.00%

	2024	%
3D	595	0.33%
Colour	38	0.02%
Figurative	80,817	44.78%
Hologram	1	0.00%
Motion	64	0.04%
Multimedia	21	0.01%
Other	92	0.05%
Pattern	45	0.02%
Position	109	0.06%
Sound	41	0.02%
Unknown	12	0.01%
Word Mark	98,651	54.66%
Σ	180,486	100.00%

	2025	%
3D	250	0.39%
Colour	12	0.02%
Figurative	27,716	43.65%
Hologram	0	0.00%
Motion	6	0.01%
Multimedia	3	0.00%
Other	48	0.08%
Pattern	14	0.02%
Position	29	0.05%
Sound	11	0.02%
Unknown	15	0.02%
Word Mark	35,399	55.74%
Σ	63,503	100.00%

	All Years	%
3D	13,455	0.44%
Colour	1,259	0.04%
Figurative	1,303,304	42.62%
Hologram	16	0.00%
Motion	310	0.01%
Multimedia	118	0.00%
Other	1,546	0.05%
Pattern	267	0.01%
Position	604	0.02%
Sound	550	0.02%
Unknown	74	0.00%
Word Mark	1,736,690	56.79%
Σ	3,058,193	100.00%

Stats: EUTM Registrations

	All Years	%
3D	8,683	0.33%
Color	431	0.02%
Figurative	1,135,572	43.53%
Hologram	8	0.00%
Motion	247	0.01%
Multimedia	100	0.00%
Other	732	0.03%
Pattern	147	0.01%
Position	216	0.01%
Sound	392	0.02%
Unknown	47	0.00%
Word Mark	1,462,239	56.05%
Σ	2,608,814	100.00%



‘Other’ types of marks: smell/olfactory, taste marks, tactile marks

Currently not acceptable

- ✓ representation must be clear, precise, self-contained, easily accessible, intelligible, durable and objective
- ✓ **the current state of technology does not allow these types of marks to be represented in such way**



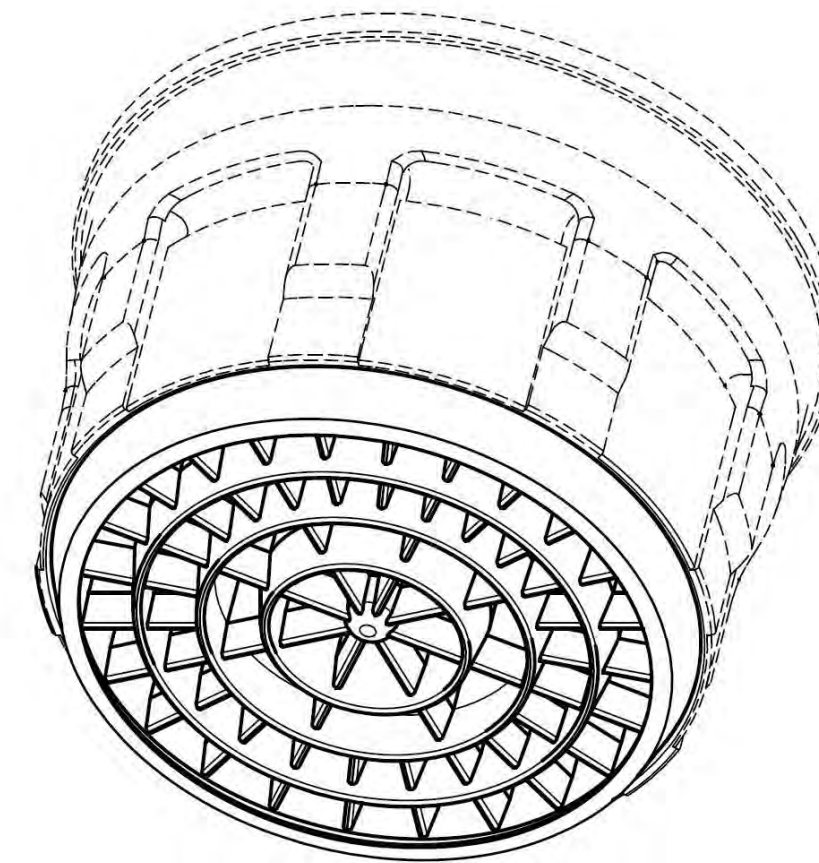
‘Other’ types of marks: smell/olfactory, taste marks, tactile marks

Currently **not acceptable**



The mark is a position tactile mark

C-93/23



Non-traditional marks in the Digital Age



Distinctiveness – Article 7(1)(b) EUTMR

Main Issue Detected: Lack of distinctiveness

It must fulfil the essential function of a trade mark:

- ✓ Identify the **product or service**
- ✓ Enable the consumer to **distinguish** it from those of other undertakings

How Is It Assessed?

By reference to:

- ✓ The **goods/services** for which registration is sought
- ✓ The **relevant public's perception**, which may vary across categories

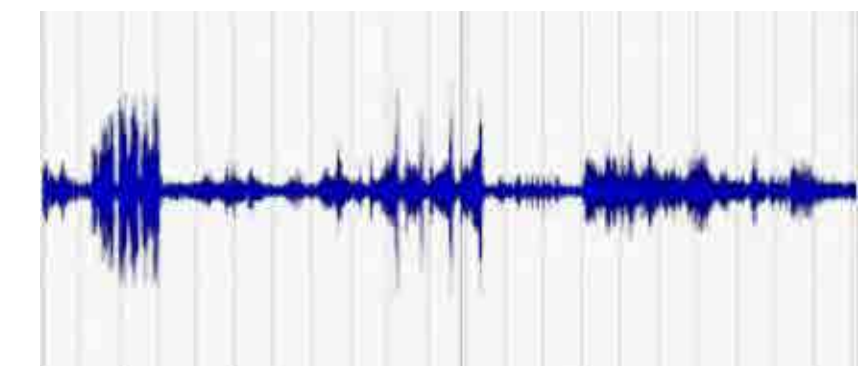
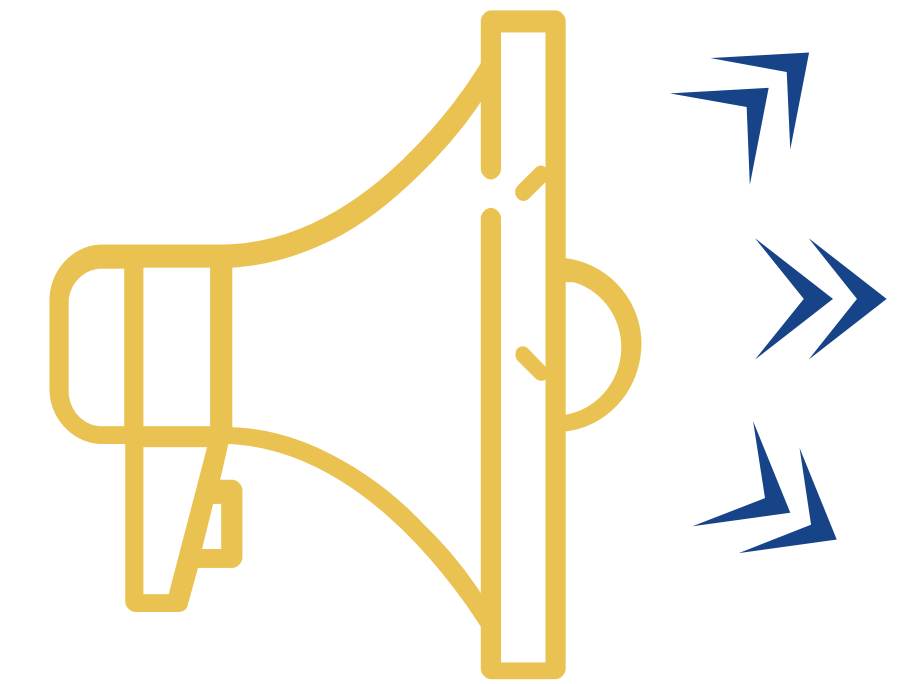
Sound marks

Definition:

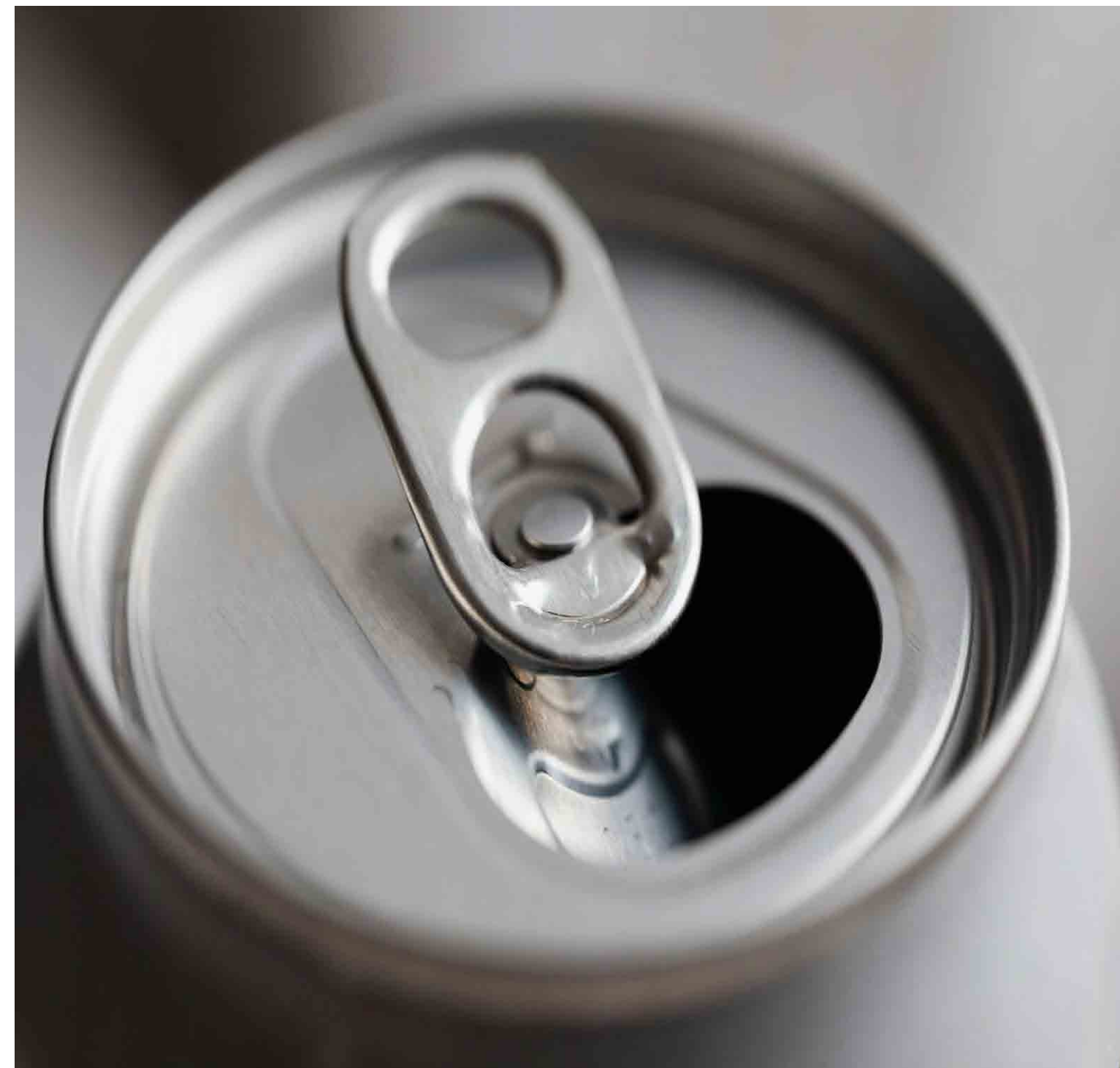
A mark consisting exclusively of a sound or combination of sounds.

Key Points:

- Must be represented via an **audio file (.mp3)** or **sonogram**.
- Must be **distinctive**, i.e. capable of identifying the commercial origin.
- Common sounds (e.g. single notes, everyday noises) are rarely distinctive.
- Simple melodies or sounds commonly linked to goods/services are generally **refused** unless acquired distinctiveness is shown.



Sound marks

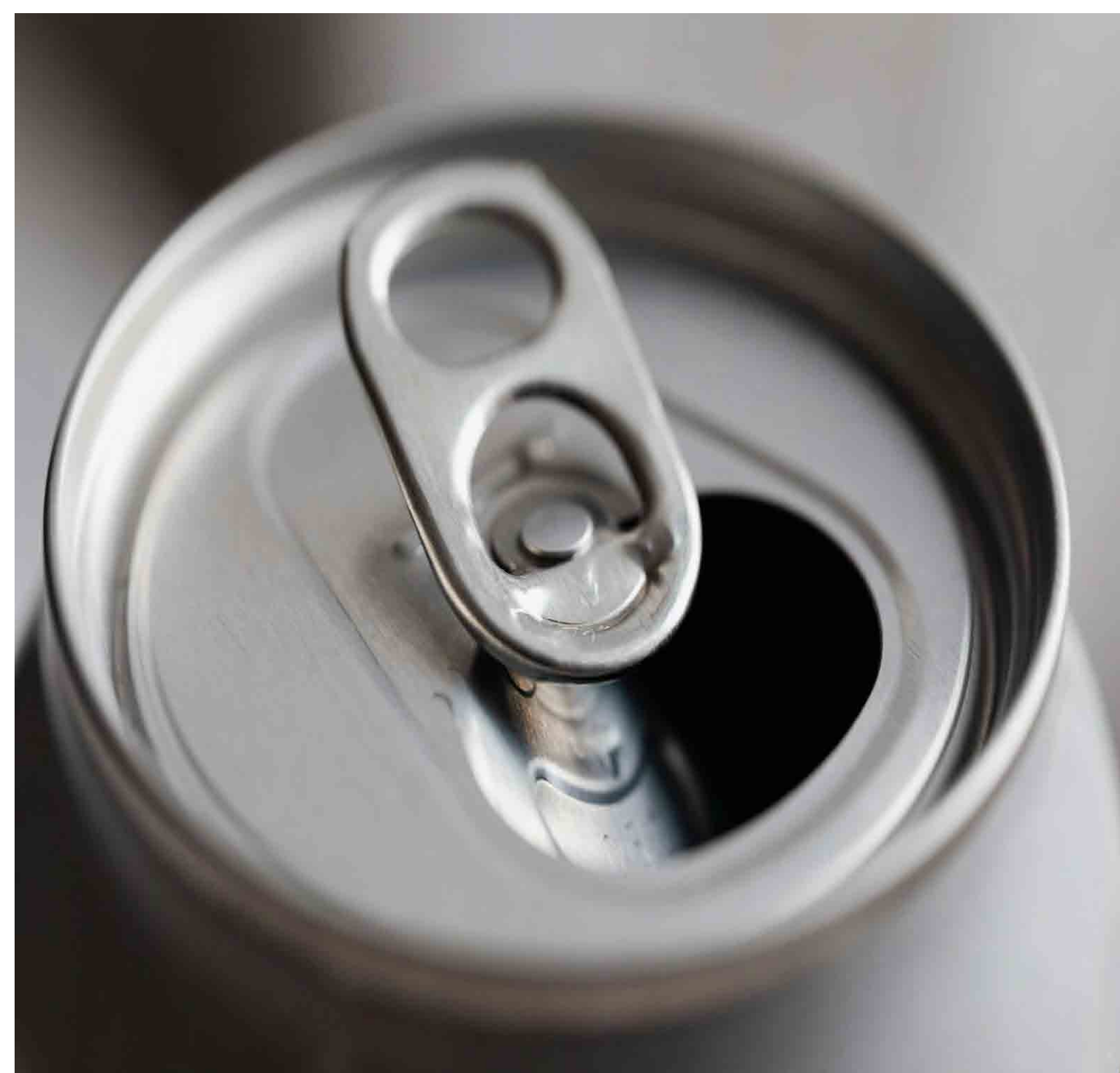


EUTM 17 912 475 for *beverages*



Sound marks

✗ NEGATIVE RESULT

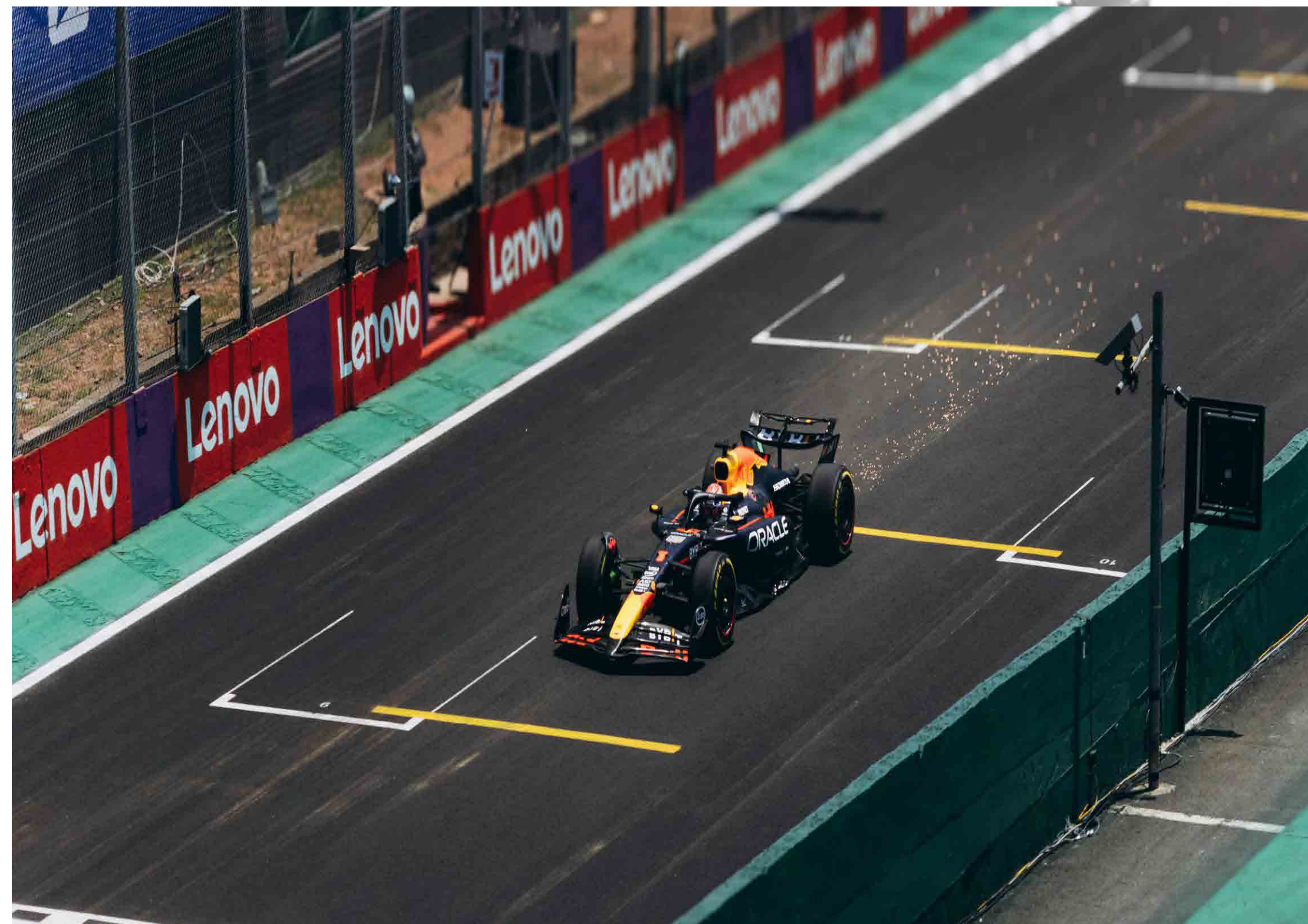


EUTM 17 912 475 for *beverages*

- **Resonance:** lacking where the sound is perceived as a functional element of the goods and services applied for or as an indicator without any intrinsic characteristic of its own (for example, due to its excessive simplicity or banality)
- **No significant departure test**
- merely **technical and functional**



Sound marks



EUTM 18 795 489
for *vehicles and parts*
***thereof* in Class 12**

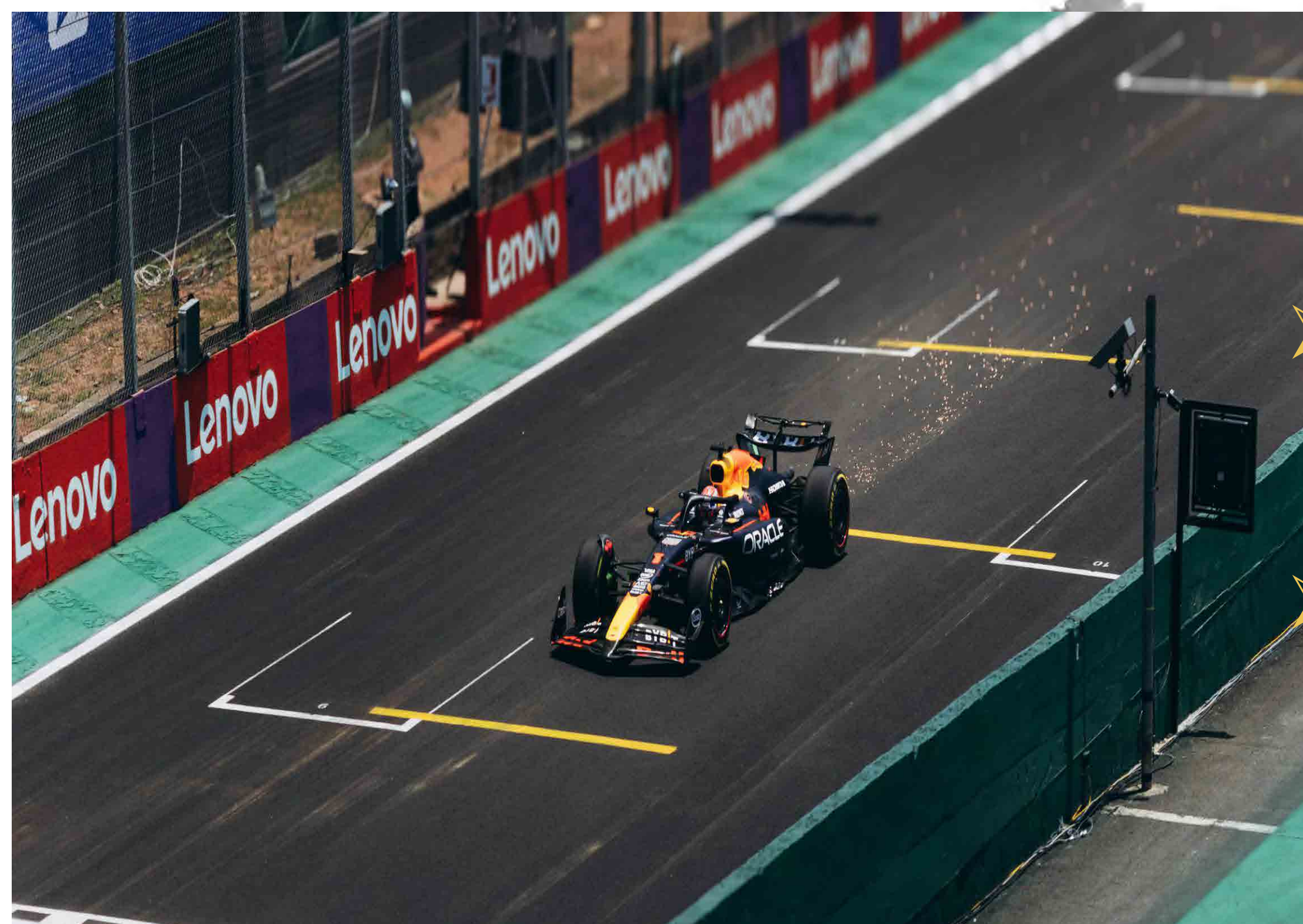


Funded by the European Union



Sound marks

✗ NEGATIVE RESULT



EUTM 18 795 489

for vehicles and parts thereof in Class 12

➤ **1st instance:** no striking or memorable elements

➤ **BOA, R 1900/2023-5** : not completely independent of and unrelated to the goods claimed...overall simple and banal...typical feature of cars



Funded by the European Union



Sound marks

➤ **Too long?**

➤ **Too short?** (18 849 003  / 18 121 851 

➤ **Too complex?**



Sound marks

EUTM 18 168 977

- 1st instance: too long, less memorable



Sound marks



POSITIVE RESULT

EUTM **18 168 977**

- 1st instance: too long, less memorable

R 1996/2020-5, THE SOUND OF THE THEME OF THE JAMES BOND MOVIE (2021):

- The sound contains a melody
- It has a resonance



Funded by the European Union



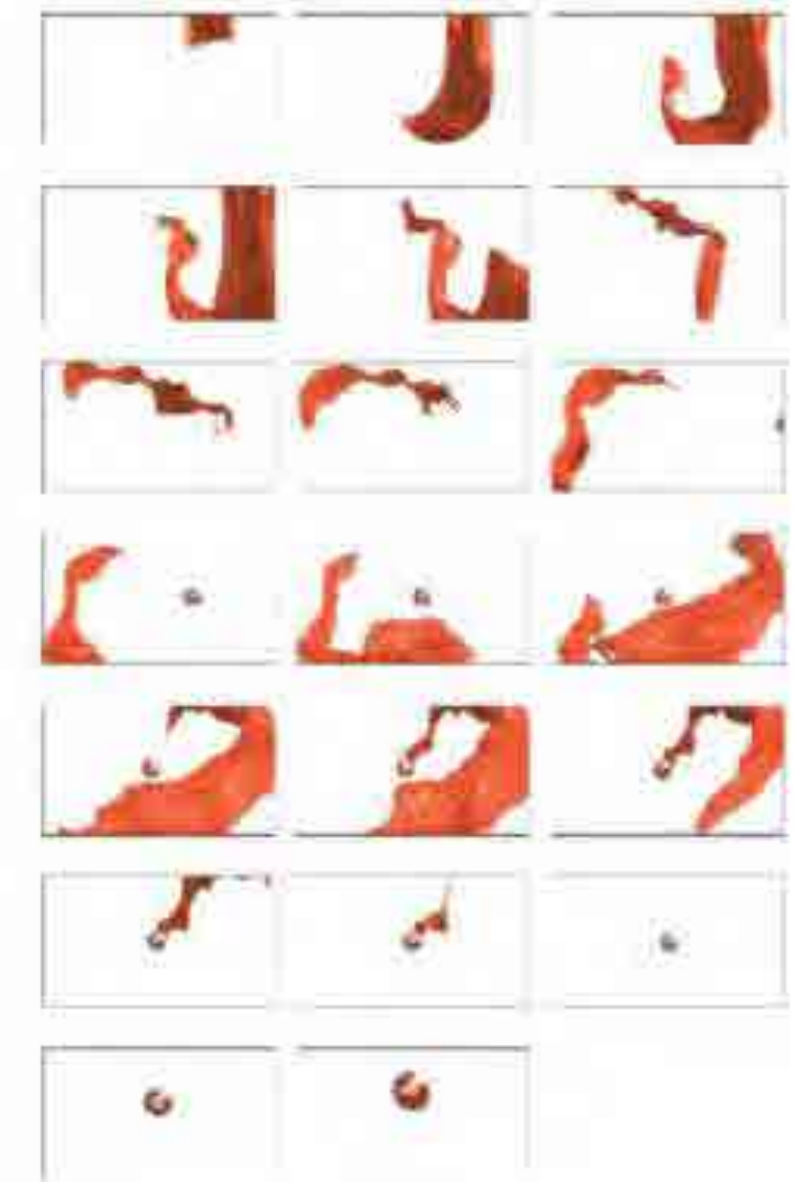
Motion marks

Definition:

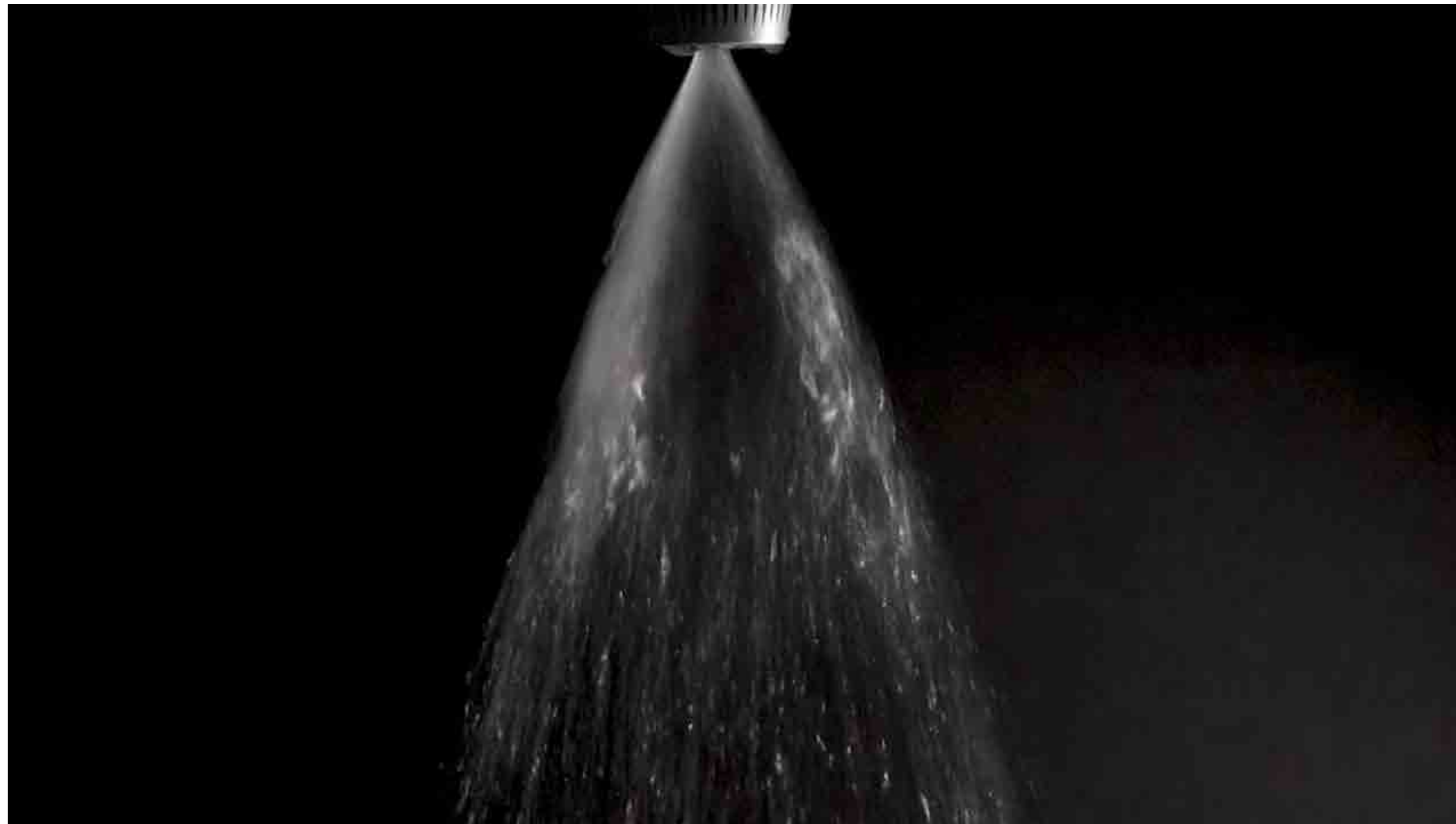
A mark consisting of a movement or a change in position of elements.

Key Points:

- Represented by a **video file (.mp4)** or series of **sequential images**.
- Distinctiveness may arise from **movement + verbal/figurative elements**.
- Pure movement alone rarely suffices unless it is original and unexpected.
- If the consumer cannot link the motion to the goods/services, it may be distinctive.



Motion marks



EUTM 18 254 994



**EUTM 18 710 082
R0315/2023-2**



Motion marks



POSITIVE RESULT



Multimedia marks

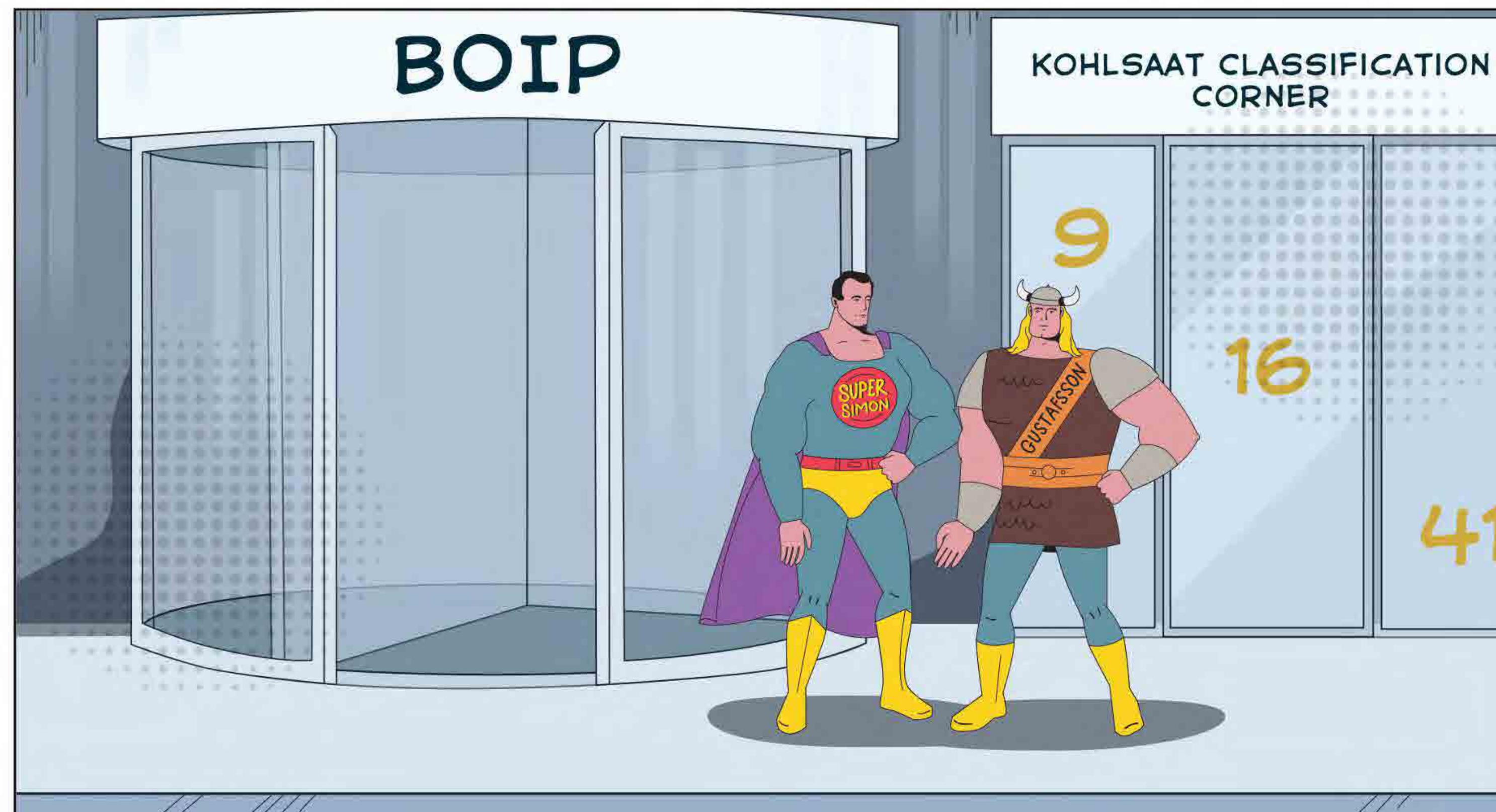
Definition:

A mark combining **image** and **sound simultaneously** (e.g. short video clips).

Key Points:

- Represented as a **.mp4 file** (video)
- Distinctiveness can be established if **either sound or image** is distinctive.
- Non-identifiable or overly generic sequences are refused.

Multimedia marks



EUTM 18 061 546

for *books* (Class 16),
wine (Class 33),
*entertainment and cultural
services and performance of
classical music* (Class 41)



Multimedia marks



POSITIVE RESULT



EUTM 18 061 546

for *books* (Class 16),
wine (Class 33),
*entertainment and cultural
services and performance of
classical music* (Class 41)



Non-traditional marks in the Digital Age

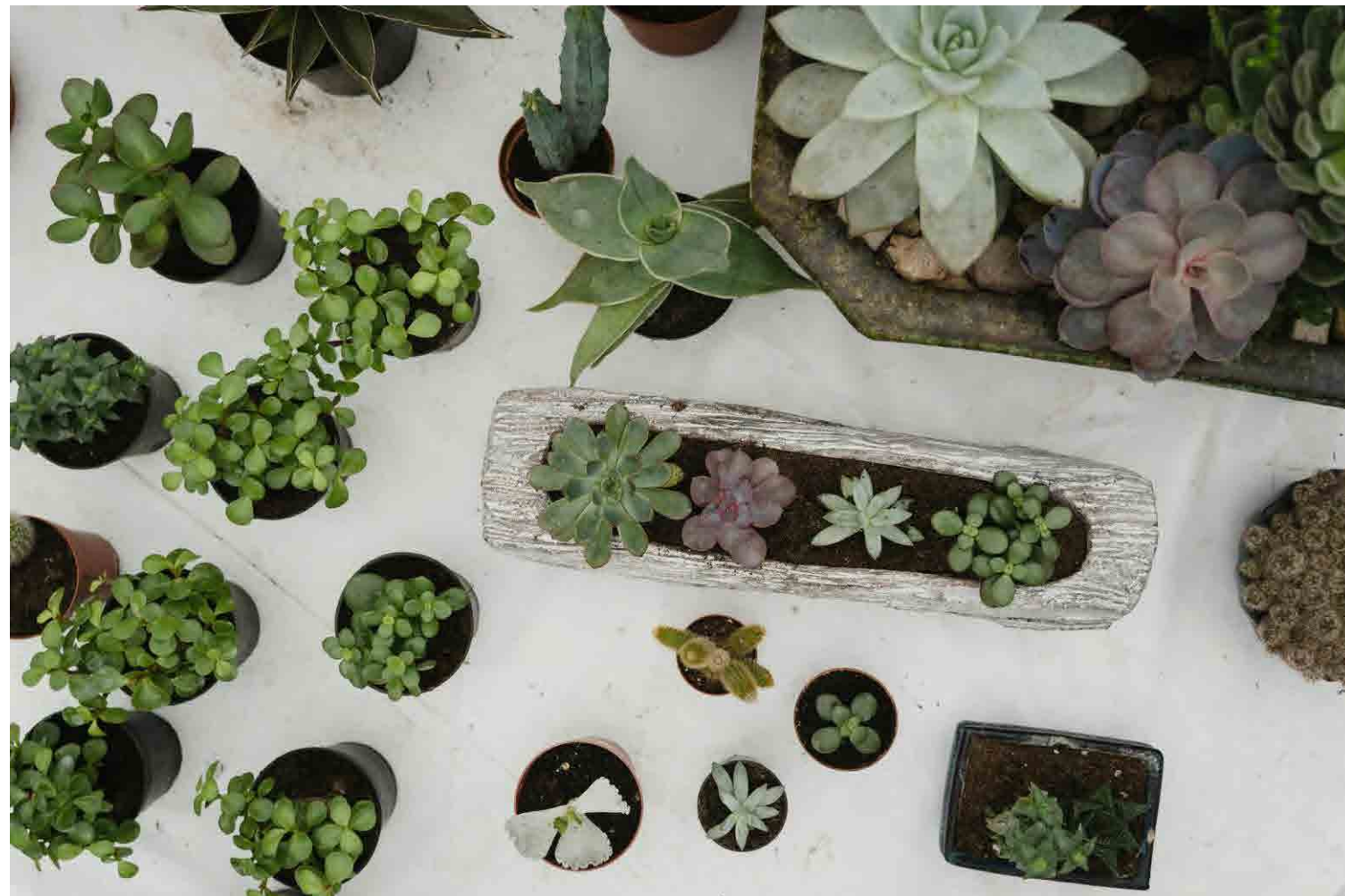
Other Gounds: Descriptiveness, genericness and deceptiveness

Non-traditional marks in the Digital Age

- **Descriptiveness, genericness and deceptiveness**
- Signs that consist **exclusively of sound, movement and a combination of image and sound**, which results from the nature of the goods, can be **necessary to obtain a technical result**, or can **give substantial value** to the goods

Non-traditional marks in the Digital Age

➤ Flags, GIs, plant varieties



Non-traditional marks in the Digital Age

✗ NEGATIVE RESULT



- **Article 7(1)(f) – Contrary to public order and principles of morality**
- **EUTM 17 282 203 contrary to accepted principles of morality**



Hologram marks



Definition:

A trade mark consisting of elements with **holographic characteristics**—an image that **changes appearance** when viewed from different angles.

Key Points:

- Must be represented in **.mp4** or **graphical sequence**.
- Assessed similarly to motion marks if no real 3D effect is perceived.
- Distinctiveness depends on **memorability and impact** of the holographic effect.

Notable Cases:

- .  EUTM 18399029 (Classes 3, 5, 16): Registered as hologram mark.
-  R 2367/2020-4: Mark considered lacking a real 3D effect—treated as a motion mark instead.

Non-traditional marks in the Digital Age

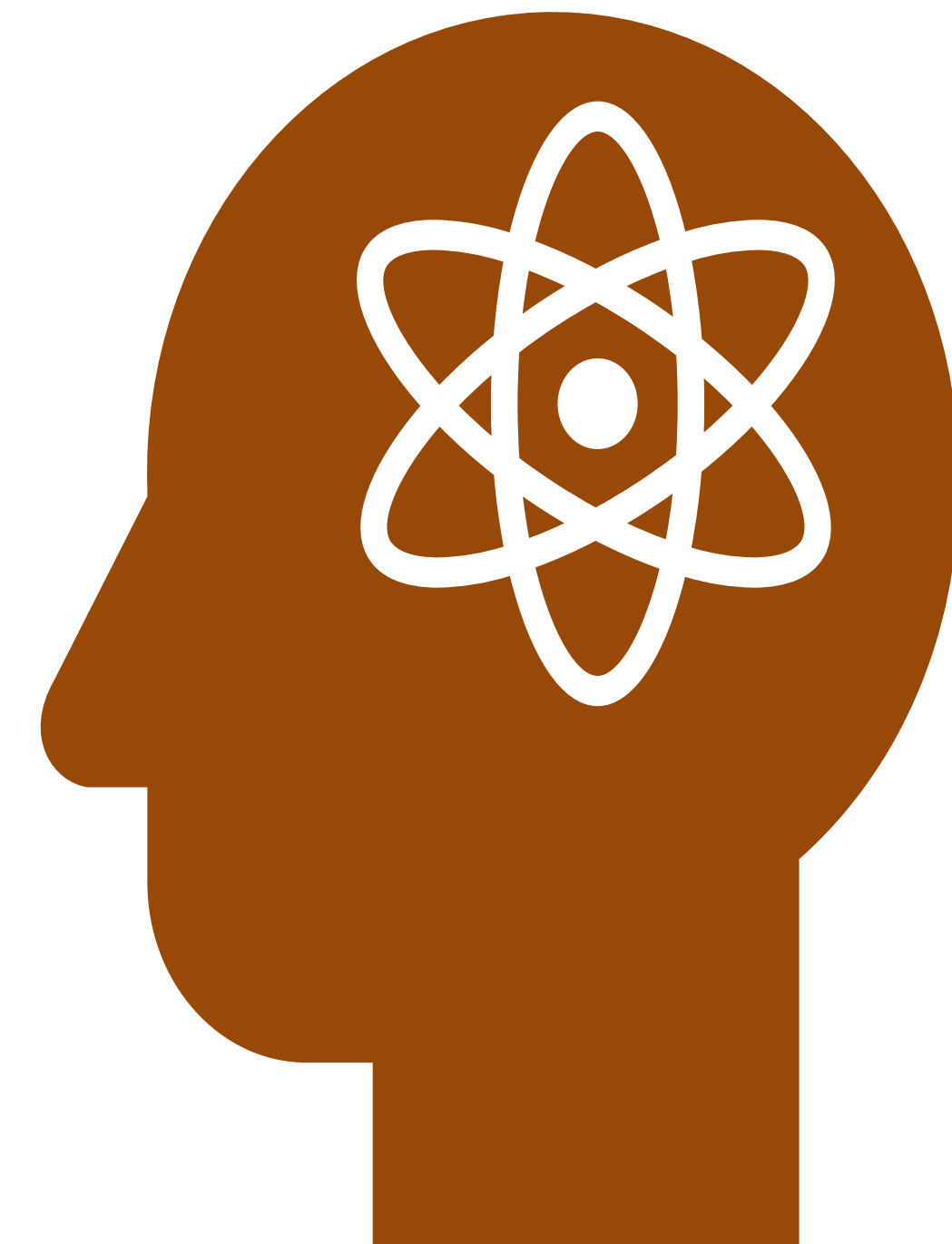
Other Issues



Non-traditional marks in the Digital Age

➤ **USE**

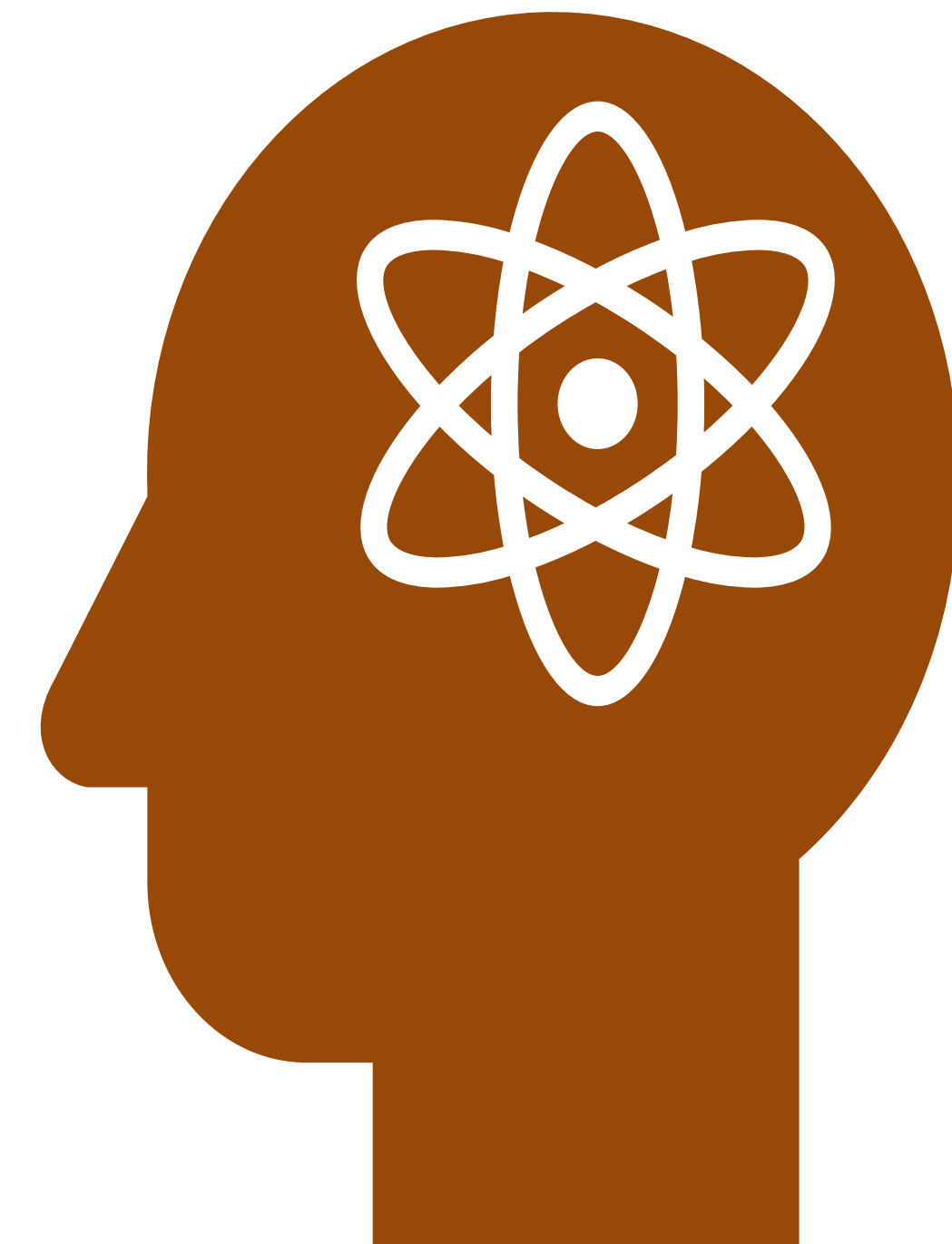
- ✓ Type of use
- ✓ Territory



Non-traditional marks in the Digital Age

➤ **USE**

- ✓ Type of use
- ✓ Territory



➤ **COMPARISON OF SIGNS**



Non-traditional marks in the Digital Age





THANK YOU

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Presentation			
Status	DRAFT / APPROVED		
Approved by owner	-		
Authors	-		
	-		
Contributors	-		
	-		

Revision history			
Version	Date	Author	Description
0.1	DD/MM/YYYY		
0.1	DD/MM/YYYY		
0.1	DD/MM/YYYY		