



ASSESSING DISTINCTIVENESS

MONIKA TOMCZYNSKA | MANILA | 1 OCTOBER 2025

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Bureau of
TRADEMARKS**CERTIFICATE
OF APPRECIATION**

is presented to

MONIKA TOMCZYNSKA

In recognition of her invaluable contribution in sharing her
knowledge on the EUIPO's practice on the substantial examination of
marks on absolute grounds of refusal during the

**Online Experts Meeting-Training on
Trademark Examination Guidelines for the
IPOP HL Examiners**

Given this 17th day of January 2023 via Zoom.



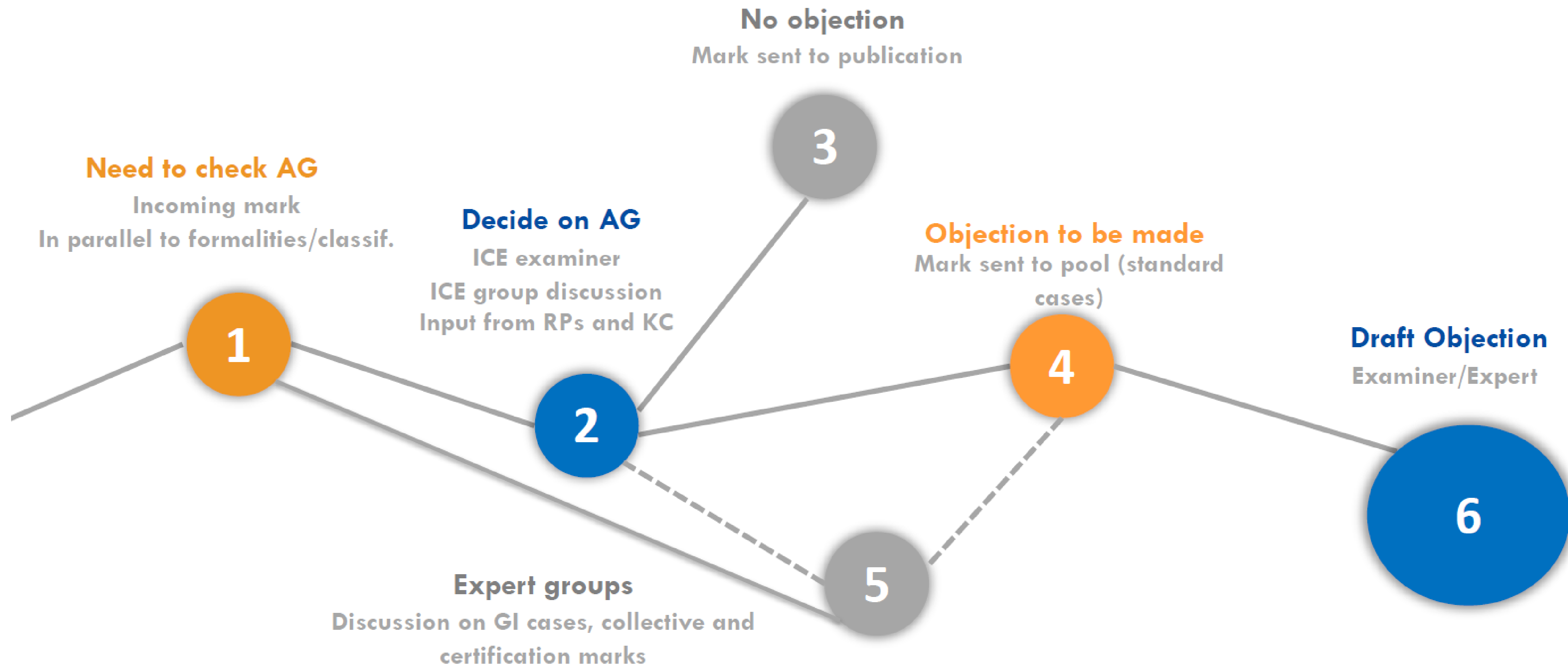
Jesus Antonio Z. Ros
Director, Bureau of Trademarks



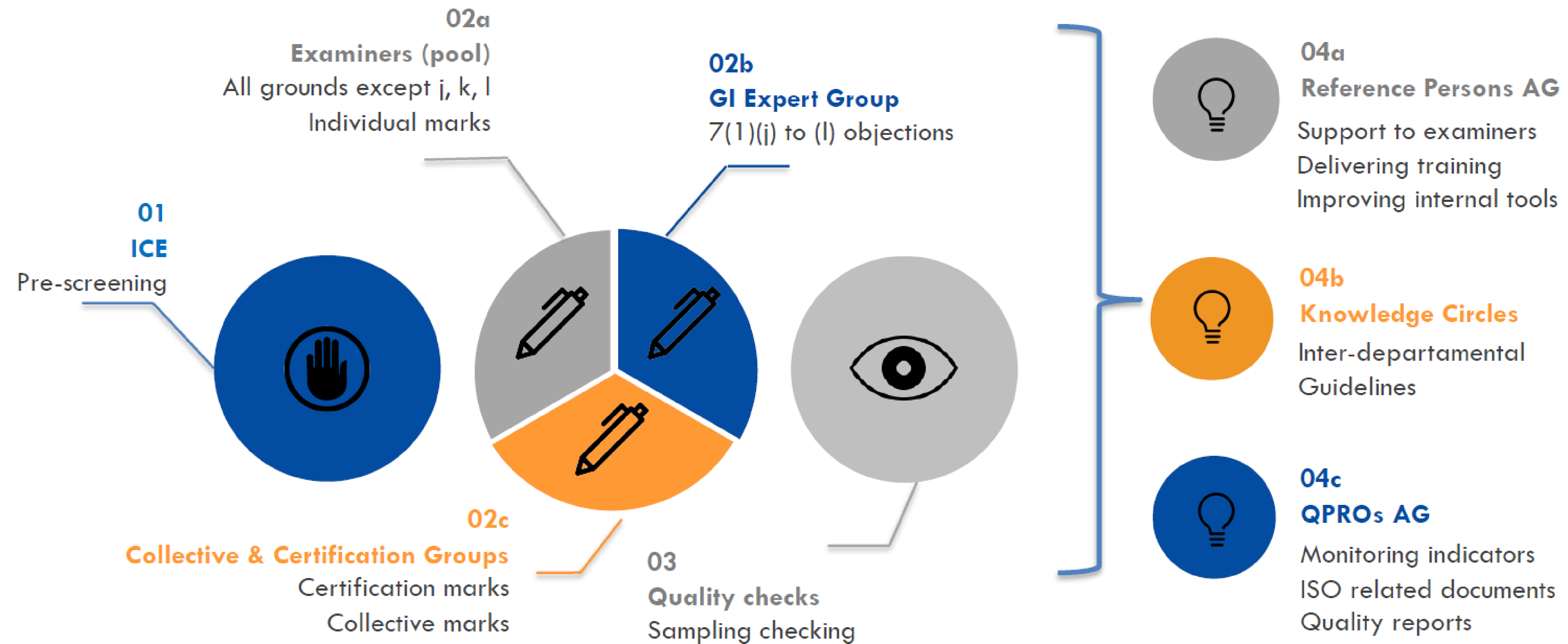
ABSOLUTE GROUNDS EXAMINATION PROCESS AT THE EUIPO



AG EXAMINATION PROCESS AT EUIPO



AG EXAMINATION PROCESS AT EUIPO



AG EXAMINATION PROCESS AT EUIPO



ASSESSMENT OF DISTINCTIVENESS



A Trade mark must be *distinctive* for the the relevant consumer (average consumer). It must be *capable of the identifying the G&S from a particular undertaking* and distinguish those G&S from those coming from other undertakings (competitors).

May overlap with descriptiveness but has a broader scope.



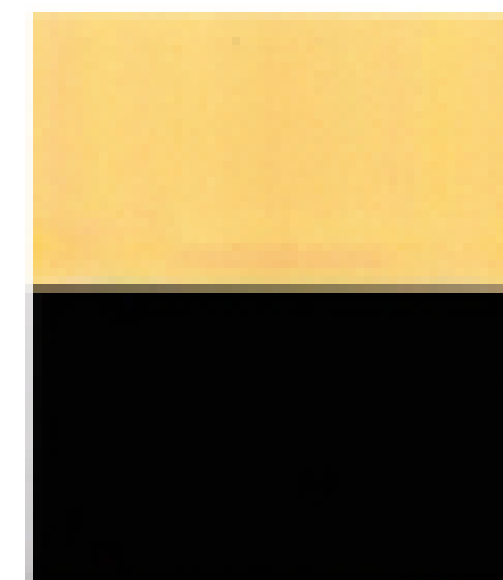
A Trade mark must be *distinctive* for the the relevant consumer (average consumer). It must be *capable of the identifying the G&S from a particular undertaking* and distinguish those G&S from those coming from other undertakings (competitors).

May overlap with descriptiveness but has a broader scope.



Greener & Greener (Word)

[019018710](#) Nice classes 1; 4; 5; 29; 31; 40



[018890627](#) Nice classes 9

sleep.com

[018589283](#) Nice classes 35

[R1838/2021-5](#)



PERFECTING YOUR FORMULA (Word)

[018342666](#) Nice classes 42 (partial)



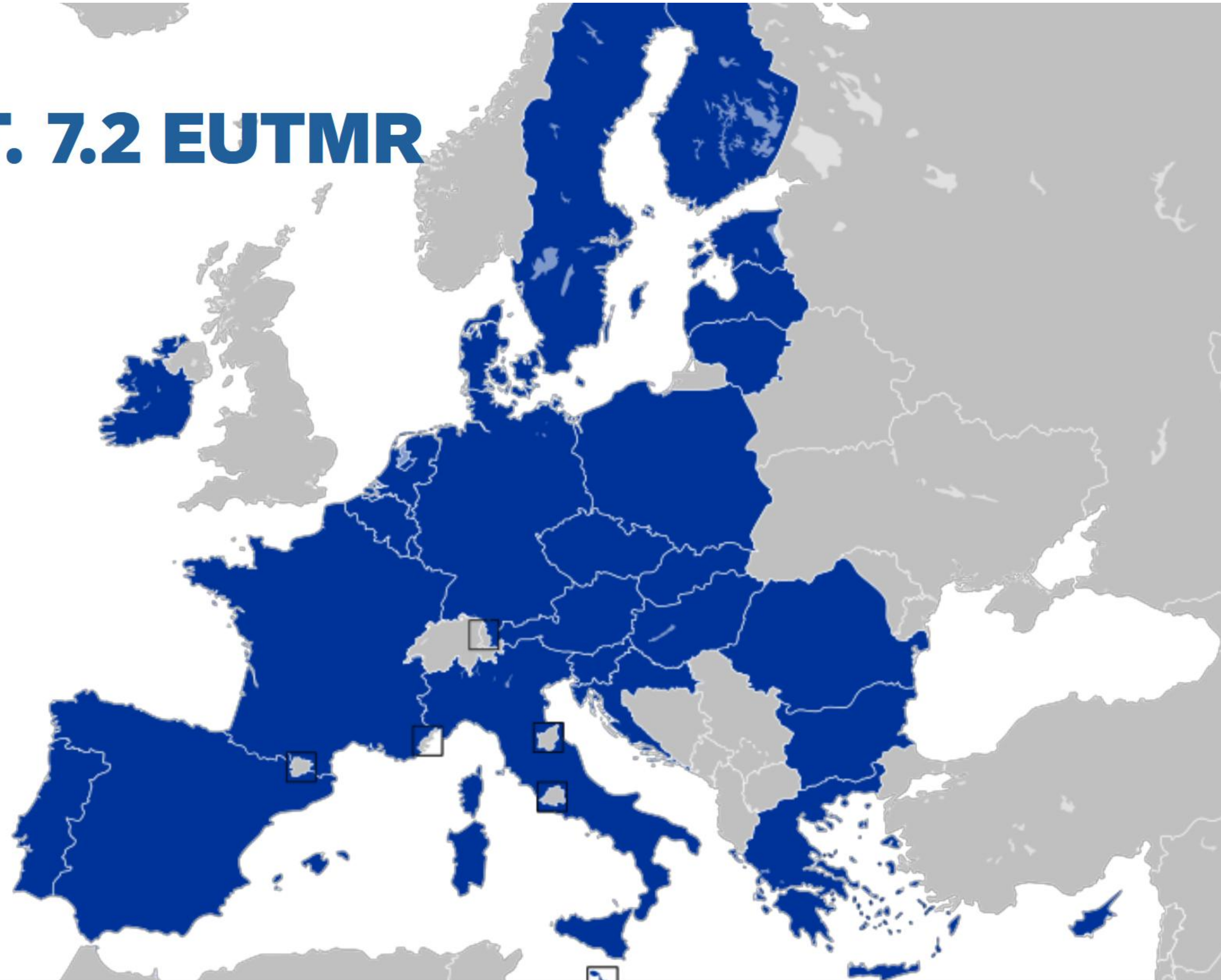
Average Consumer Standard (Established by CJEU)

The Court of Justice of the EU (CJEU) has consistently **defined** the average consumer as:

Reasonably well-informed,
Observant and circumspect,
But not necessarily linguistically skilled or analytical.

The average consumer is not assumed to translate or analyze foreign words unless they are commonly known or understood in their region or among the target public.

ART. 7.2 EUTMR



Acquired distinctiveness

**EVERY RULE HAS AN
EXCEPTION**

**Art. 7.3
EUTMR**



Selected examples



Slogans

13/09/2023, T-324/22

BECAUSE THERE IS NO PLANET B

Cl. 3, 16, 18 and 21

Application rejected; BoA confirmed by the Court



Slogans



NEGATIVE RESULT

13/09/2023, T-324/22

BECAUSE THERE IS NO PLANET B

Cl. 3, 16, 18 and 21

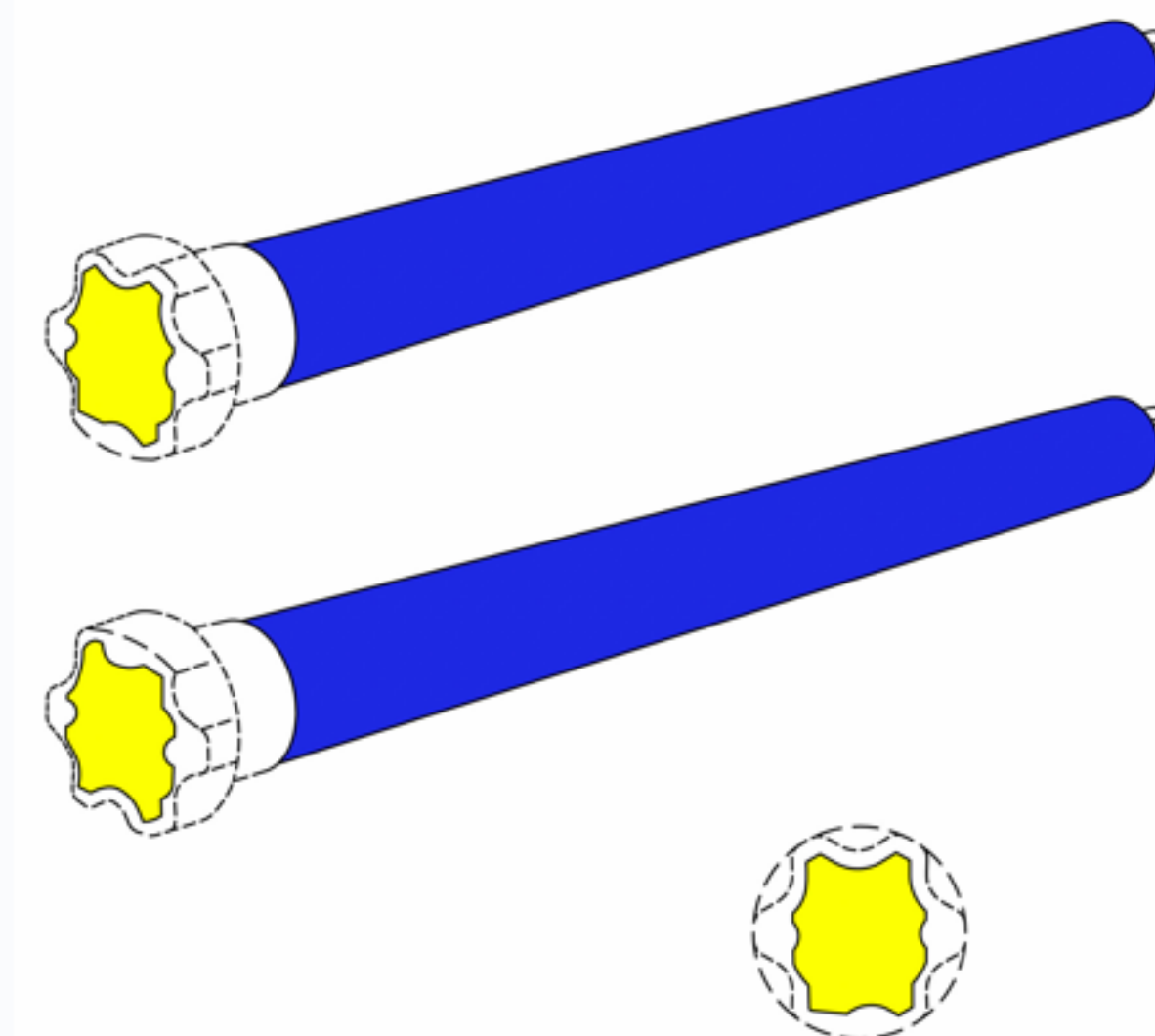
Application rejected; BoA confirmed by the Court



Position mark

EUTM 18443415

Description: *The trademark consists of the colour yellow ("Pantone 1235 C") applied to the inside of the motor head and the colour blue ("RAL 5001") applied to the whole body of the motor as shown*



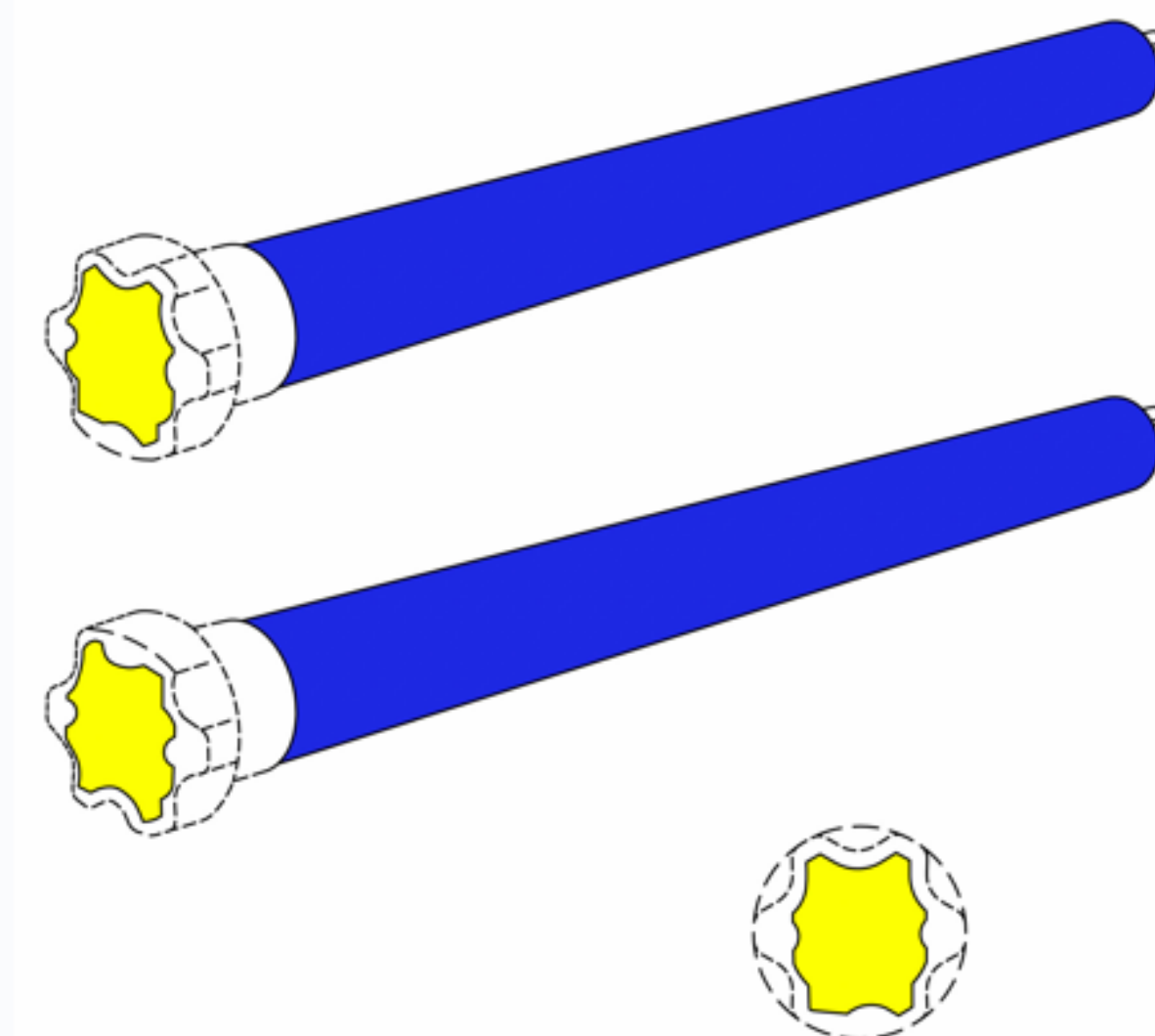
Position mark



POSITIVE RESULT

EUTM 18443415

Description: *The trademark consists of the colour yellow ("Pantone 1235 C") applied to the inside of the motor head and the colour blue ("RAL 5001") applied to the whole body of the motor as shown*



Motion mark

Decision 08/06/2018, R-2661/2017-5

MOTION OF A CHEF
ADDING SALT TO
A PIECE OF MEAT



Motion mark



POSITIVE RESULT (partially)

Decision 08/06/2018, R-2661/2017-5

MOTION OF A CHEF
ADDING SALT TO
A PIECE OF MEAT



Virtual world



Virtual goods

Virtual goods refers to non-physical items intended for use in the course of trade in online and/or virtual environments

- they may merely **depict** real-world goods
- they may **emulate functions** of real-world goods
- they may represent items with **no equivalent in the real world.**



Virtual services

Virtual services may refer to:

- real-world services that are provided via online and/or virtual environments
- services developed for the virtual environment that emulate a real-world service
- services developed for the virtual environment without counterparts in the real world.



Word mark

Decision 28/02/2023, 2356/2022 – 2

METaverse DRINK

Cl. 32



Word mark



NEGATIVE RESULT

Decision 28/02/2023, 2356/2022 – 2

METaverse DRINK

Cl. 32



A photograph of a business meeting in progress. Several people in professional attire are gathered around a table. One person is holding a tablet displaying a document with charts and text. Another person is holding a smartphone. There are coffee cups on the table. The scene is brightly lit, suggesting an office or conference room environment.

EUROPEAN COOPERATION

15 CP

Convergence of practices

- CP3. Distinctiveness - Figurative Marks containing descriptive/non-distinctive words

<p>1.</p> <p>Flavour and aroma</p> <p>Flavour and Aroma</p> <p>Flavour and aroma</p> <p>Flavour and A roma</p>	<p>F A R O A</p> <p>Flavour and Aroma</p>
<p>2.</p> <p>Flavour and aroma</p> <p>Flavour and aroma</p> <p>Flavour and aroma</p>	<p>Flavour and Aroma</p> <p>Flavour and Aroma</p> <p>Flavour and Aroma</p>
<p>3.</p> <p>Fresh sardine</p> <p>Fresh sardine</p> <p>Fresh Sardine</p> <p>FRESH SARDINE</p>	<p>resh Sardine</p> <p>Fresh sardine</p> <p>FRESH SARDINE</p>

- CP9. Distinctiveness of three-dimensional marks - (shape marks) containing verbal and/or figurative elements when the shape is not distinctive in itself

THANK YOU

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