

## Movement marks and holograms

To come within the meaning of a “trade mark”, a movement mark or a hologram has to be a sign which is capable of distinguishing the goods or services of one undertaking from those of other undertakings, and also capable of being represented graphically (section 3(1)).

### Representation and description of the mark

Where the mark applied for registration is in the nature of a movement mark which consists of a moving image, or a hologram whose image may change when viewed from different angles, the applicant should state the precise nature of the mark with a clear representation and description of the mark on the application form.<sup>1</sup> In the absence of any appropriate indication and description, the mark applied for will be examined as a conventional mark.

### Movement marks

An application for a movement mark must contain a graphical representation of the mark. The movement mark applied for should be graphically represented by a series of still images in the correct sequence of movement and the movement should be perceivable. Same as an application for any other trade mark, in order to comply with the legal requirements, the graphical representation of a movement mark must be clear, precise, self-contained, easily accessible, intelligible, durable and objective (*Sieckmann* Case C-273/00; 12 Dec 2002).

In addition, the applicant must provide a written description identifying exactly what

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<sup>1</sup> The box in Part 07 of Form T2 should be marked and a written description of the movement mark or hologram should be stated in Part 13 of Form T2A.

the mark consists of. The description should include the following information:

- that the mark is a movement mark which consists of a representation of a sequence of images;
- what the sequence of images depicts, i.e. a precise description of the complete sequence of movement;
- how many images are involved in the complete sequence of movement;
- what the sequential order is of the images; and
- that there is a single (not variable) sequence of movement.

For examples of acceptable and unacceptable representations for movement marks, see chapter on Deficiencies checking.

## Holograms

For an application for registration of a hologram, the graphical representation of the mark has to depict clearly all the material features of the mark including all its various images when viewed from different angles. In practice, it is extremely difficult to represent graphically a hologram with many features which vary at different viewing angles. The application must also be supported by a written statement which precisely describes the multiple views of the hologram when it is viewed from different angles. See chapter on Deficiencies checking.

## Samples

All in all, the precise identity and essential features of the movement mark or hologram applied for must be readily discernible by virtue of its graphical representation without reference to any sample. Should the applicant submit any sample in the form of a video clip of a movement mark or a specimen of a hologram to the Registry, such sample will be treated by the examiners for reference only. The graphical representation of the movement mark or the hologram, the written description of the mark and the specification of goods and/or services remain as the fundamental basis for the examiners to assess the registrability of the mark.

## Assessment of distinctive character

The criteria and principles for assessing the distinctive character of a sign which consists of a moving image or a hologram are no different from those to be applied to other types of marks. In other words, the distinctiveness of a movement mark or a hologram must depend upon whether the mark is capable of identifying the goods or services as originating from a particular undertaking, and thus distinguishing such goods or services from those of other undertakings. On the other hand, it may be that the relevant public's perception is not necessarily the same in relation to movement marks and holograms and it could therefore prove more difficult to establish distinctiveness in relation to these categories of marks as compared with marks of other categories. The distinctive character of a movement mark or a hologram must be assessed by reference to the goods or services in respect of which registration has been applied for, and by reference to the perception of them by the relevant public.

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