

Impact of Artificial Intelligence on Intellectual Property

Author: [Carles Molina](#)



Every day, news about Artificial Intelligence (AI) fills the media, often highlighting negative aspects, such as the creation of fake photographs of celebrities or even strikes by screenwriters in Hollywood demanding protection against AI. However, rather than succumbing to the usual pessimism, we will focus here on an overview of how AI is influencing the IP arena and the opportunities it presents.

AI as author

AI has been involved in the generation of inventions for a long time. It has been used internally to inspire ideas, assist in the creation of test scenarios and, most commonly, incorporate AI tools into technical solutions to address specific problems, such as classification, text, image and speech recognition, or big data analytics.

With the recent explosion of generative neural networks such as ChatGPT, Stable Diffusion, DALL-E or Midjourney, AI has reached the general public and these tools have started to be used to generate graphic works and inventions and, although there is no direct record, possibly also industrial designs and device marks. Of course, this has also given rise to questions about copyright infringement.

Clearly, these tools can serve as a starting point or source of inspiration for inventors and authors. However, the current legal framework poses challenges for the direct registration of works or inventions created with AI. Most countries do not recognize “artificial” authorship, and it is still unclear whether individuals will be able to claim authorship in developments obtained directly with these tools. The debate is still open and considerations about the author of the specific commands (prompts) that have guided the generative AI to obtain the result may be decisive.

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The General Court provides a different definition of likelihood of confusion for certification marks

Author: [Emil Edissonov](#)



In its recent judgment of 11/10/2023, related to another conflict between the marks HALLOUMI (national certification trademark) and GRILLOUMI (EU trademark), the General Court of the EU provided a new definition of likelihood of confusion for the cases where the earlier mark is a certification mark.

Preliminary

The EU Directive on Trademarks [Directive (EU) 2015/2436] defines a “certification mark” as a trade mark which is described as such when the mark is applied for and is capable of distinguishing goods or services which are certified by the proprietor of the mark in respect of material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics, from goods and services which are not so certified [Article 27(a)]. The EUTM Regulation [Regulation (EU) 2017/1001] contains essentially the same provision for EU certification marks [Article 83(1)].

According to the CJEU, a likelihood of confusion is the risk that the public might believe that the goods or services in question come from the same undertaking or economically-linked undertakings (Canon, §29).

But when examining whether there is a likelihood of confusion with an earlier certification mark, does the criterion based on the commercial origin apply, considering that the essential function of certification marks differs from that of individual marks?

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Porsche revs up the engine trying to register sound marks

Author: [Jiarong Wu Zhou](#)



Sound marks

Sound marks are those made up exclusively of a sound or combination of sounds. Some examples are the famous McDonald’s jingle “I’m loving it” or the Mercadona supermarket melody.

As with any other type of trademark, the prerequisite for the registration of a sound mark is that the sound alone possesses distinctive character, i.e. that the average consumer is able to perceive the sound as a memorable sound uniquely associated with the goods or services offered by a particular undertaking, and that it has a “certain strength” that enables consumers to

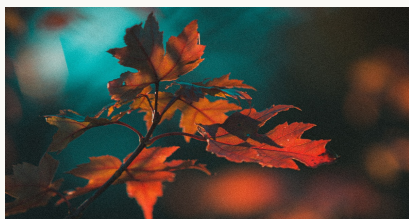
perceive it and regard it as a trade mark.

This is not the case if the sound is perceived as a functional element of the goods and services for which protection is sought or as an indicator with no intrinsic characteristics of its own. This is precisely what happened to Porsche with the engine sound which it sought to register as a trademark.

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NEWS IN BRIEF



Public holiday announcement: 1 November

Our offices will be closed on Wednesday 1 November 2023 as it is a public holiday in Spain.

Any deadline due on that day will automatically be rescheduled to the next working day, Thursday 2 November 2023.

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