

CJEU, C-240/18: the assessment of accepted principles of morality in the light of art. 7 (1) (f) of the Trade mark Regulation

On 27 February 2020, the CJEU ruled in case C-240/18, concerning the mark “Fack Ju Göthe”.

The case arose from a trade mark application that was rejected by the EUIPO based on the absolute ground of refusal of **art. 7(1) (f) of Reg. (EC) no. 207/2009, preventing the registration of signs “contrary to public policy or to accepted principles of morality”**.

The applicant appealed the EUIPO’s decision – which had **found “Fack Ju Göhte” intrinsically vulgar, based on an assessment of the sign as such** - to the General Court (GCEU), which, however, upheld the EUIPO’s decision.

With the ruling at hand, the EUCJ set aside the judgment of the GCEU and annulled the decision of the EUIPO fifth Board of Appeal, finding that **the mark is not “contrary to public policy or to accepted principles of morality”**, thus the absolute ground under art. 7(1) (f) does not apply in this case.

The decision follows the lines of the Advocate General’s Opinion of 2 July 2019 (you can read about it [here](#)), which suggested to rule out the previous decisions, in that a correct assessment of the evidence would have excluded that the mark “Fack Ju Göthe” actually offends the principles of morality.

As to follow the Court’s reasoning, one needs to start from the definition of the **concept of “accepted principles of morality”** - the specific one at stake in this case.

Indeed, that notion is made up of the values and convictions adhered to by a given society, set and enforced by the prevailing social consensus within that given society at a given time. Hence, principles of morality must be assessed with reference to the prevailing perception among the relevant public.

To that end, **case-specific evidence must be provided, as to ascertain how the public would react** to that sign being affixed to the respective goods or services. The CJEU identified the relevant public in the German-speaking public at large.

Then, confirming the AG’s Opinion, it stated that **the great success of the film “Fack Ju Göhte”** (also released for screening to younger audiences and incorporated into the learning program of the Goethe-Institut, the Federal Republic of Germany’s cultural institute) **should have been taken into account by the GCEU**.

Instead, the latter just confined itself to an abstract assessment of the mark and of the English expression to which the first part of it is assimilated by the public.

In view of the above, the CJEU concluded that the mark under consideration is fully compliant with EU trade mark law, thus setting aside the judgment of the General Court.