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COMMON PRACTICE

TRADE MARKS CONTRARY TO PUBLIC POLICY OR TO ACCEPTED PRINCIPLES OF MORALITY

APPENDIX – POTENTIALLY RELEVANT LEGAL SOURCES IN RELATION TO FREEDOM OF EXPRESSION

APPENDIX – POTENTIAL RELEVANT LEGAL SOURCES IN RELATION TO FREEDOM OF EXPRESSION

1 PURPOSE OF THE DOCUMENT

The CP14 Common Practice does not analyse how an assessment should be performed of the impact of freedom of expression on the application of Article 4(1)(f) of Directive (EU) No 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (TMD). This matter is not currently settled in EU trade mark law. Therefore, this annex has been drawn up to provide information that is current as of 7 September 2023 ([1]) on potentially relevant legal sources for the application of Article 10 European Convention on Human Rights and Article 11 Charter of Fundamental Rights of the European Union in relation to the application of Article 4(1)(f) of the TMD.

Section 2 provides relevant legal sources to be considered in the assessment of this ground for refusal.

In addition, relevant case-law has been researched, with special attention to the guide published by the European Court of Human Rights on the general applicability of Article 10 ECHR, which provides key principles in this area and the relevant precedents and case-law.

In this regard, section 3 of this document contains extracts of case-law from the European Court of Justice and the European Court of Human Rights that have been selected based on their relevance for the subject matter of the Common Practice. For a deeper understanding of the topic and the case-law mentioned below, it is advised to refer to the abovementioned guide and to read the case-law cited in this annex in full.

2 LEGAL FRAMEWORK

2.1 European Union law

- **Directive (EU) 2015/2436 approximating the laws of the Member States relating to trade marks (TMD) ([2])**

  Recital 27 of the preamble

  > … this Directive should be applied in a way that ensures full respect for fundamental rights and freedoms, and in particular the freedom of expression.

- **Charter of Fundamental Rights of the European Union (CFREU) ([3])**

  Article 11 – Freedom of expression and information:

  > 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
  >
  > 2. The freedom and pluralism of the media shall be respected.

  Article 16 – Freedom to conduct a business:

([1]) Date on which the discussions on the CP14 Common Practice were finalised and the final versions of the Common Practice and the Annex were confirmed.
([2]) Directive (EU) No 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States
([3]) Charter of Fundamental Rights of the European Union

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

Article 17 – Right to property

2. Intellectual property shall be protected.

- **European Convention on Human Rights (ECHR) ([4])**

Article 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

2.2 Other related instruments

- Guide on Article 10 of the European Convention on Human Rights

The *Guide on Article 10 of the European Convention on Human Rights – Freedom of Expression* is updated regularly. Although not binding on the European Court of Human Rights, this guide contains a step-by-step analysis of freedom of expression in the cases conducted by this court, as well as numerous examples of casuistry and relevant case-law to illustrate its interpretation in different areas/fields, to inform legal practitioners.

The most relevant points of this guide in relation to the CP14 topic, that is, trade marks contrary to public policy or to accepted principles of morality, are the following:

I	Introduction.
I(B)	General considerations on Article 10 in the Court's case-law.
II	Specific questions on the assessment of admissibility in cases concerning Article 10 of the Convention.
III	The Court's examination of Article 10 cases: a step-by-step analysis.
XI	Freedom of expression and the legitimate aims of national security, territorial integrity or public safety, the prevention of disorder or crime.
XII	Freedom of expression and the protection of health or morals.

([4]) European Convention on Human Rights

XIV Pluralism and freedom of expression.
XIV(F) Pluralism and the freedom of expression of minorities.

3 RELEVANT CASE-LAW

3.1 Case-law from the European Court of Justice

3.1.1 Fack Ju Göhte case ([5])

In this case, the trade mark applied for was the word sign 'Fack Ju Göhte', which is the title of one of the most successful films of 2013 in Germany.

This sign was refused registration on the basis of Article 7(1)(f) of Regulation No 207/2009, read in conjunction with Article 7(2) of that regulation. The subsequent appeals were dismissed successively by the EUIPO Boards of Appeal and by the General Court. However, the Court of Justice set aside the judgment of the General Court and annulled the EUIPO's decision refusing the trade mark.

This judgment is significant because it acknowledges that freedom of expression must be considered, as required by recital 21 of Regulation (EU) 2017/1001 on the EU trade mark ([6]) (and in line with recital 27 of the TMD).

For these conclusions, contextual elements were also taken into account, such as the following citations from the Fack Ju Göhte judgment:

> … great success of the comedy of the same name amongst the German-speaking public at large and the fact that its title does not appear to have caused controversy, as well as the fact that access to it by young people had been authorised and that the Goethe Institute – which is the cultural institute of the Federal Republic of Germany, active worldwide and tasked, inter alia, with promoting knowledge of the German language – uses it for educational purposes.
>
> 6. Recital 21 of Regulation 2015/2424 states:
>
> > (21) … Furthermore, this Regulation should be applied in a way that ensures full respect for fundamental rights and freedoms, and **in particular the freedom of expression**.
>
> 7. **Recital 21 of Regulation 2017/1001 reproduces verbatim** the wording of recital 21 of Regulation **2015/2424** set out in the preceding paragraph.
>
> 56. Lastly, it should also be added that, contrary to the General Court's finding in paragraph 29 of the judgment under appeal, that 'there is, in the field of art, culture and literature, a constant concern to preserve freedom of expression which does not exist in the field of trade marks', freedom of expression, enshrined in Article 11 of the Charter of Fundamental Rights of the European Union, must, as [the] EUIPO acknowledged at the hearing and as the Advocate General states in points 47 to 57 of his Opinion, be taken into account when applying Article 7(1)(f) of Regulation No 207/2009. Such a finding is corroborated, moreover, by recital 21 of **Regulation No 2015/2424**, which amended Regulation No 207/2009 and recital 21 of **Regulation 2017/1001**, both of which **expressly emphasise** the need to apply those regulations in such a way as to

([5]) 27/02/2020, C-240/18 P, Fack Ju Göhte, EU:C:2020:118.
([6]) Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark

ensure full respect for **fundamental rights** and freedoms, **in particular freedom of expression**.

3.1.2 Opinion of Advocate General Bobek in relation to the Fack Ju Göhte case ([7])

47. **Freedom of expression does indeed play a role in trade mark law**.

48. First, respect for fundamental rights constitutes a condition of the lawfulness of any EU measure. The scope of application of the Charter of Fundamental Rights of the European Union ('the Charter') and the **fundamental rights guaranteed therein extends to any activity or omission of EU institutions and bodies.** […] **The same must naturally hold true in the field of trade marks for activities and omissions of EU bodies, such as [the] EUIPO**.

49. Second, the commercial nature of a potential activity is no reason to limit or even exclude fundamental rights protection. […] It might be recalled that the European Court of Human Rights **('ECtHR') has stated that freedom of expression**, guaranteed in Article 10 ECHR, **applies independently of the type of message, including when a commercial advertisement is concerned.** […] It has applied freedom of expression specifically to evaluating restrictions imposed by national legislation on trade marks or other forms of advertisement. […]

50. Third, the applicability of **freedom of expression in the field of trade marks was explicitly confirmed in the preamble to Regulation (EU) 2015/2424 modifying Regulation No 207/2009 and is recognised today in Regulation 2017/1001.** […].

51. Fourth, and on a rather subsidiary note, such an understanding of the law is also **consistent with the previous case-law of the General Court (24) and with [the] EUIPO's own decision-making practice.** […].

52. Thus, **freedom of expression clearly applies in the field of trade mark law**. …

56. In sum, although **it is not a primary goal of trade mark law**, freedom of expression clearly remains present therein. Seen in this light, the statement in question of the General Court in paragraph 29 of its reasoning is perhaps intended to convey a slightly different idea: not that there is no role whatsoever for freedom of expression in trade mark law, but rather that**, in contrast to the fields of arts, culture, and literature, the weight to be given to freedom of expression in the area of trade mark law may be** somewhat different, **perhaps slightly lighter, in the overall balancing of the rights and interests present**.

57. … although freedom of expression, as well as other fundamental rights potentially at stake, **must be taken into account in the overall balancing exercise**, the protection of freedom of expression **is not the primary goal of trade mark protection**.

3.2 Case-law from the European Court of Human Rights

As the previously mentioned guide of the ECtHR states, the applicability of Article 10 of the Convention 'also includes information of a commercial nature'. In this regard, the present document particularly refers to the following judgments – although it is advisable to consult, in parallel, the *Guide on Article 10 of the European*

([7]) Opinion Of Advocate General Bobek, delivered on 2 July 2019, 'Trade mark protection and freedom of expression', § 45-57.

Convention on Human Rights – Freedom of expression:

3.2.1 Sekmadienis Ltd. v Lithuania, Appl. No 69317/14, 30 January 2018 ([8])

This case refers to an advertisement campaign featuring models that resemble religious figures and which contains the following texts: 'MOTHER OF GOD, WHAT A DRESS'; 'Jesus, Mary What A Style' and 'JESUS, WHAT A JEANS'. The complaint argued that the advertisements degraded religious symbols, offended the feelings of religious people and created 'a danger that society might lose the necessary sense of sacredness and basic respect for spirituality'. As a result, the company was fined by the Lithuanian authorities on account of the fact that the advertisements that it had displayed had been held to be contrary to public morals.

In this case, freedom of expression was applied to advertisements that have a purely commercial purpose.

The ECtHR concluded that the Lithuanian authorities had violated the right to freedom of expression because they failed to strike a fair balance between, on the one hand, the protection of public morals and the rights of religious people, and, on the other hand, the applicant company's right to freedom of expression.

> 2. The Court's assessment
>
> (a) Whether there was an interference
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> […]
>
> (ii) Application of the above principles in the present case
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> 66. In the present case, the impugned interference was based on Article 4 § 2(1) of the Law on Advertising which prohibited advertising that 'violates public morals' (see paragraph 34 above). **The Court agrees with the Government that the concept of public morals is necessarily broad and subject to change over time, and as a result, a precise legal definition may not be possible** (see paragraph 53 above). **It considers that it would be unrealistic to expect the national legislature to enumerate an exhaustive list of actions which violate public morals** (see, mutatis mutandis, Kudrevičius and Others v Lithuania [GC], No 37553/05, § 113, ECHR 2015).
>
> […]
>
> (d) Whether the interference was necessary in a democratic society
>
> (i) Relevant general principles
>
> 70. **The Court has consistently held that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the**

([8]) https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-180506%22]}

demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'. As enshrined in Article 10, freedom of expression is subject to exceptions which must, however, be construed strictly, and the need for any restrictions must be established convincingly (see Von Hannover v Germany (No 2) [GC], Nos 40660/08 and 60641/08, § 101, ECHR 2012; Bédat v Switzerland [GC], No 56925/08, § 48, ECHR 2016; and Satakunnan Markkinapörssi Oy and Satamedia Oy, cited above, § 124).

71. **The adjective 'necessary', within the meaning of Article 10 § 2, implies the existence of a 'pressing social need'. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court**. **The Court is therefore empowered to give the final ruling on whether a 'restriction' is reconcilable with freedom of expression as protected by Article 10** (see Mouvement raëlien suisse v Switzerland [GC], No 16354/06, § 48, ECHR 2012 (extracts); Animal Defenders International v the United Kingdom [GC], No 48876/08, § 100, ECHR 2013 (extracts); and Bédat, cited above, § 48).

72. **The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was 'proportionate to the legitimate aim pursued' and whether the reasons adduced by the national authorities to justify it are 'relevant and sufficient'. In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts** (see Mouvement raëlien Suisse, cited above, § 48; Morice v France [GC], No 29369/10, § 124, ECHR 2015; and Medžlis Islamske Zajednice Brčko and Others v Bosnia and Herzegovina [GC], No 17224/11, § 75, 27 June 2017).

73. **The Court further reiterates that the breadth of the Contracting States' margin of appreciation varies depending on a number of factors, among which the type of speech at issue is of particular importance. It has consistently held that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on matters of public interest** (see Baka v Hungary [GC], No 20261/12, § 159, ECHR 2016, and Satakunnan Markkinapörssi Oy and Satamedia Oy, cited above, § 167). **However, a wider margin of appreciation is generally available to the Contracting States when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or, especially, religion** (see Wingrove, cited above, § 58, and Murphy v Ireland, No 44179/98, § 67, ECHR 2003-IX (extracts)). Similarly, States have a broad margin of appreciation in the regulation of speech in commercial matters or advertising (see markt intern Verlag GmbH and Klaus Beermann v Germany, 20 November 1989, § 33, Series A No 165; Hertel,

cited above, § 47; and Mouvement raëlien Suisse, cited above, § 61).

74. **The Court** lastly **reiterates that**, as **paragraph 2 of Article 10 expressly recognises, the exercise of the freedom of expression carries with it duties and responsibilities. Amongst them,** in the context of religious beliefs, is **the general requirement to ensure the peaceful enjoyment of the rights guaranteed under Article 9 to the holders of such beliefs including a duty to avoid as far as possible an expression that is, in regard to objects of veneration, gratuitously offensive to others and profan**e (see Otto-Preminger-Institut v Austria, 20 September 1994, § 49, Series A No 295-A; Murphy, cited above, § 65; İ.A. v Turkey, No 42571/98, § 24, ECHR 2005-VIII; Giniewski v France, No 64016/00, § 43, ECHR 2006-I; and Klein, cited above, § 47).

(ii) Application of the above principles in the present case

[…]

78. **The Court has previously held that it is not to be excluded that an expression, which is not on its face offensive, could have an offensive impact in certain circumstances (see Murphy, cited above, § 72). It was therefore for the domestic courts to provide relevant and sufficient reasons why the advertisements, which, in the Court's view, were not on their face offensive, were nonetheless contrary to public morals** (see, mutatis mutandis, VgT Verein gegen Tierfabriken v Switzerland, No 24699/94, §§ 75-76, ECHR 2001-VI). **The Court also notes that, as submitted by the Government, not every use of religious symbols in advertising would violate Article 4 § 2(1) of the Law on Advertising** (see paragraph 53 above), **which means that at least some explanation as to why the particular form of expression chosen by the applicant company was contrary to public morals was required by domestic law as well.**

[…]

81. The Court further observes that some of the authorities gave significant weight to the fact that approximately one hundred individuals had complained about the advertisements (see paragraphs 18 and 25 above). It has no reason to doubt that those individuals must have been genuinely offended. However, **the Court reiterates that freedom of expression also extends to ideas which offend, shock or disturb (see the references provided in paragraph 70 above). It also reiterates that in a pluralist democratic society those who choose to exercise the freedom to manifest their religion cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith** (see Otto-Preminger-Institut, § 47, and İ.A. v Turkey, § 28, both cited above; see also the position of the Venice Commission in paragraph 49 above). In the Court's view, even though the advertisements had a commercial purpose and cannot be said to constitute 'criticism' of religious ideas (see paragraph 76 above), the applicable principles are nonetheless similar (in this connection see in particular the findings of the domestic authorities that the advertisements 'encourage[d] a

frivolous attitude towards the ethical values of the Christian faith' in paragraph 18 above).

82. … In the Court's view, it cannot be assumed that everyone who has indicated that he or she belongs to the Christian faith would necessarily consider the advertisements offensive, and the Government have not provided any evidence to the contrary. Nonetheless, even assuming that the majority of the Lithuanian population were indeed to find the advertisements offensive, **the Court reiterates that it would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority. Were this so, a minority group's rights to, inter alia, freedom of expression would become merely theoretical rather than practical and effective as required by the Convention** (see, mutatis mutandis, Barankevich v Russia, No 10519/03, § 31, 26 July 2007; Alekseyev v Russia, Nos 4916/07 and 2 others, § 81, 21 October 2010; and Bayev and Others, cited above, § 70).

83. Accordingly, **the Court concludes that the domestic authorities failed to strike a fair balance between**, on the one hand, **the protection of public morals and the rights of religious people, and**, on the other hand, **the applicant company's right to freedom of expression**. The wording of their decisions – such as 'in this case the game has gone too far' (see paragraph 11 above), 'the basic respect for spirituality is disappearing' (see paragraph 15 above), 'inappropriate use [of religious symbols] demeans them [and] is contrary to universally accepted moral and ethical norms' (see paragraph 25 above) and 'religious people react very sensitively to any use of religious symbols or religious persons in advertising' (see paragraphs 11, 13, 15 and 18 above) – demonstrate that **the authorities gave absolute primacy to protecting the feelings of religious people, without adequately taking into account the applicant company's right to freedom of expression.**

84. There has therefore been a violation of Article 10 of the Convention.

3.2.2 Dor v Romania, Appl. No 55153/12, 25 August 2015 ([9])

This case referred to the application of the sign 'CRUCIFIX' for services in Classes 36; 41; 42 and 45 before the Romanian Intellectual Property Office. The Office refused registration on the grounds of public order and morality, considering that religious symbols could only be used in connection with religious activities and by authorised persons, which was not the case for the sign in question, based on the services the sign was sought for.

The ECtHR noted that the case does not concern the manifestation of the applicant's freedom of thought, conscience or religion, but the commercial use of a trade mark. It concluded, inter alia, that the rejection of the trade mark application amounts to an interference with the applicant's exercise of his freedom of expression. Such interference violates Article 10 unless it is 'prescribed by law', pursues a legitimate aim under Article 10(2) ECHR, and is 'necessary in a democratic society'.

([9]) https://hudoc.echr.coe.int/eng#{%22languageisocode%22:[%22FRE%22],%22appno%22:[%2255153/12%22],%22documentcollectionid2%22:[%22ADMISSIBILITY%22],%22itemid%22:[%22001-157422%22]}

In Law

38. The applicant submits that the choice of name and graphic representation of the mark 'CRUCIFIX' falls within the scope of his freedom of thought, conscience and religion and that by refusing to register it the domestic authorities have infringed his freedom of expression.

39. The Court notes that the present case does not concern the manifestation of the applicant's freedom of thought, conscience or religion, but the commercial use of a trade mark. In these circumstances, the Court considers it appropriate to examine the application solely in the light of Article 10 of the Convention. This provision reads as follows:

> 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers …
>
> 2. The exercise of these freedoms, which carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

A. Whether there was an interference with the applicant's freedom of expression

41. The Court recalls that advertising is a means for citizens to learn about the characteristics of the services and goods offered to them (Casado Coca v Spain, judgment of 24 February 1994, Series A, No 285-A, p. 13, § 51).

42. In the present case, by applying for registration of the trade mark 'CRUCIFIX', the applicant intended to make known to the public the services it wished to provide under that mark, distinguishing itself from those of other competing undertakings. **In that context, the contested mark was an important element of its advertising and commercial strategy**.

43. **Recalling that Article 10 of the Convention guarantees freedom of expression to 'everyone', irrespective of the type of message conveyed** (see Groppera Radio AG and Others v Switzerland, 28 March 1990, § 55, Series A No 173), **even where the advertisement is commercial** (see Casado Coca, cited above, §§ 36-37) **or where the aim is to make a profit** (see Autronic AG v Switzerland, 22 May 1990, § 47, Series A No 178), **the Court considers that, in view of the advertising nature of the mark, the applicant's application falls within the scope of protection under Article 10 § 1 of the Convention**.

44. **The rejection of the application therefore amounts to an interference with the applicant's exercise of his freedom of expression. Such interference violates Article 10 unless it is 'prescribed by law', directed to an aim or aims which are legitimate under Article 10 § 2 and 'necessary' in a democratic society to achieve**

them.

B. Whether the interference was prescribed by law

46. The Court therefore considers that the interference at issue was 'provided for by law', namely Article 5 § f) of Law No 84/1998.

C. Whether the interference pursued a legitimate aim

47. **The Court considers that the interference pursued a legitimate aim, namely the protection of the public against fraudulent commercial practices and compliance with consumer law**. It follows that the measure at issue pursued the legitimate aims of 'protecting the rights of others' and 'preventing offences' within the meaning of Article 10 § 2.

D. Whether the alleged interference was necessary in a democratic society

48. In its Grand Chamber judgment in the case of Mouvement raëlien suisse v Switzerland [GC], No 16354/06, §§ 59-63, ECHR 2012 (extracts), the Court recalled its case-law concerning the restrictions that may be placed on speech that is more akin to commercial than political speech.

49. **In such cases, the national authorities are, in principle, in a better position than the international court to decide whether a 'restriction' or 'sanction' is 'necessary' to achieve the legitimate aims they are pursuing, thanks to their direct and constant contacts with the country's population** (Müller and Others v Switzerland, 24 May 1988, § 35, Series A No 133).

50. In exercising its supervisory jurisdiction, it is not the Court's task to take the place of the national courts, but it is for it to ascertain, in the light of the case as a whole, whether the decisions they have taken under their discretionary powers are compatible with the Convention provisions relied on (Axel Springer AG v Germany [GC], No 39954/08, § 86, 7 February 2012).

51. **The scope of the margin of appreciation available to Contracting States in assessing the necessity and extent of interference is greater where they regulate freedom of expression in areas likely to offend intimate personal convictions of a moral or, more particularly, religious nature** (Murphy v Ireland, No 44179/98, § 67, ECHR 2003-IX (extracts)). **States also have a wide margin of appreciation in regulating commercial and advertising speech** (see markt intern Verlag GmbH and Klaus Beermann v Germany, 20 November 1989, § 33, Series A No 165, and Casado Coca, cited above, § 50).

52. Advertising may be subject to restrictions designed, inter alia, to prevent unfair competition and misleading advertising. In certain contexts, even the publication of objective and truthful advertising messages could be subject to limitations, aimed at respecting the rights of others or based on the particularities of a given commercial activity or profession (Casado Coca, cited above, § 51).

53. In the present case, the Court notes that **the applicant has in no way demonstrated the existence of a link between the services, in particular legal services, which he intended to provide to the public under the contested mark and the religious symbol of the crucifix. On the contrary, he confined himself to asserting that such a choice fell within the scope of his freedom of thought, conscience and religion, as well as his freedom of expression.**

54. In these circumstances, **the Court sees no reason to consider that the domestic courts exceeded their margin of appreciation in finding that there was a risk of misleading the public and in giving precedence to the public's right to be protected against possible misleading advertising over the applicant's right to freedom of expression.**

56. **In the light of these factors and having regard to the particularly wide margin of appreciation available to the domestic authorities, the Court considers that the interference at issue was not disproportionate to the aim pursued.**

3.2.3 Vajnai v Hungary, Appl. No 33629/06, 8 July 2008 ([10])

This case refers to the use of a symbol, namely a five-pointed red star, by the Vice-President of the Worker's Party of Hungary, during a legally convened demonstration. Based on the former use of the symbol and its public meaning, the Pest Central District Court sanctioned the applicant in accordance with the Criminal Code of Hungary. The action of wearing the five-pointed red star symbol was considered by the Hungarian Court to be an offence of using a totalitarian symbol.

The ECtHR noted that the red star cannot only be understood as an exclusive representation of communist totalitarian rule, as it also symbolises the international workers' movement. It also pointed out that the applicant wore the red star symbol at a legally convened demonstration without any intention of defying the rule of law. The ECtHR concluded that it is necessary to distinguish between an expression which is shocking and offensive from that which forfeits protection under Article 10 ECHR, therefore, banning the use of this symbol would be too broad considering the multiple meanings of the red star.

A. Whether there was a violation of human rights.

52. The Court is mindful of the fact that the well-known mass violations of human rights committed under communism discredited the symbolic value of the red star. However, in the Court's view, it cannot be understood as representing exclusively communist totalitarian rule, as the Government have implicitly conceded (see paragraph 40 above). It is clear that this star also still symbolises the international workers' movement, struggling for a fairer society, as well certain lawful political parties active in different Member States.

B. Whether the applicant has defied the rule of law by using the symbol.

53. Moreover, the Court notes that the Government have not shown that wearing the red star exclusively means an identification with totalitarian ideas, especially when seen in the light of the fact that the applicant did so at a lawfully organised, peaceful demonstration in his capacity as the vice-president of a registered left-wing political party, with no known intention of participating

([10]) https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-87404%22]}

in Hungarian political life in defiance of the rule of law. In this connection, the Court emphasises that it is only by a careful examination of the context in which the offending words appear that one can draw a meaningful distinction between shocking and offensive language which is protected by Article 10 of the Convention and that which forfeits its right to tolerance in a democratic society.

C. Whether the interference is necessary in a democratic society.

54. The Court therefore considers that the ban in question is too broad in view of the multiple meanings of the red star. The ban can encompass activities and ideas which clearly belong to those protected by Article 10, and there is no satisfactory way to sever the different meanings of the incriminated symbol. Indeed, the relevant Hungarian law does not attempt to do so. Moreover, even if such distinctions had existed, uncertainties might have arisen entailing a chilling effect on freedom of expression and self-censorship.

55. As regards the aim of preventing disorder, the Court observes that the Government have not referred to any instance where an actual or even remote danger of disorder triggered by the public display of the red star had arisen in Hungary. In the Court's view, the containment of a mere speculative danger, as a preventive measure for the protection of democracy, cannot be seen as a 'pressing social need'. In any event, apart from the ban in question, there are a number of offences sanctioned by Hungarian law which aim to suppress public disturbances even if they were to be provoked by the use of the red star (see paragraph 15 above).