

# Information on labels and legal issues relating to green trade marks

## 1 Trade marks vs. green trade marks

The expression ‘green trade mark’ has only recently come into use in intellectual property publications. It is not a legal term. Green trade marks are not a type of trade mark in the legal sense. What is particular about them is that they contain words, slogans and figurative representations that refer to environmental protection or sustainability on their own or in combination. That is why publications about the topic of green trade marks (e.g. [Maggiore 2021](#) and [Park 2022](#)) sometimes link them to corporate communication about environmental protection.

Example of a sign rejected due to a lack of distinctiveness:

**ECOSHELL**

Partially rejected sign for textiles in classes 24 and 25. The elements combined with ECO and the green colour were not sufficient to give the sign a distinctive character. Judgment B-103/2020 by the Federal Administrative Court of 10 May 2021.

## 2 Conditions for protecting green trade marks

### Being in the public domain

Green trade marks are normal trade marks and are thus by definition distinctive signs. The distinctiveness is gauged based on the overall impression made by the trade mark. Signs with no distinctive character can generally not be protected as trade marks. Signs that consist exclusively of commonplace, descriptive or laudatory components on their own or in combination lack distinctiveness too. This means that a sign that solely comprises an obvious reference to the positive or neutral environmental impact made by the goods or services in question cannot be protected as a trade mark because it is a descriptive term (Part 5 No 4.4.1 and 4.4.2 Trade Mark Guidelines of the IPI). A trade mark can also be rejected if it consists of no more than general advertising assertions for the offering or of a slogan with no distinctive character (Part 5 No 4.4.3 and 4.4.5 Trade Mark Guidelines).

A green trade mark can nonetheless be protected if it combines elements that refer to environmental protection or sustainability with other elements, such as words, letters, numbers or figurative elements so that the sign is distinctive overall.

Examples of signs that were accepted as being distinctive:



**PROOF OF GREEN**

CH 805891, class 41



Sustainable and fair.

CH 788664, class 35, 41

### Obvious risk of deception

A trade mark must not be deceptive. In other words, it must not contain any deceptive information about the origin, quality or characteristics of the goods or services. In practice, the IPI does not examine whether the information included in the trade mark corresponds to the truth. This also applies for environment-related information in green trade marks. The IPI does not examine the actual characteristics of the trade mark applicant either. According to the IPI's practice, there is no risk of deception if the sign is used correctly for the goods and/or services for which it is registered. In other words, the IPI will only refuse to register any sign that may be deceptive if this is **obviously** the case. As a result, it is extremely rare for green trade marks to be rejected because of the risk of deception. The IPI's standard practice is to reject signs with a 'BIO' (organic) component for synthetic goods due to their deceptive nature, but to approve such signs as a matter of course for agricultural products (Part 5 No 5 Trade Mark Guidelines).

### 3 Guarantee marks and ecolabels: specific requirements of guarantee marks

Companies might want to use an **ecolabel** to inform their consumers that their goods or services meet specific ecological norms or sustainability standards. According to a [press release](#) (in German and French) by the State Secretariat for Economic Affairs, these labels should enable customers to consciously purchase eco-friendly, sustainably produced goods (See [www.labelinfo.ch/de/list](http://www.labelinfo.ch/de/list) in German and French). Ecolabels can be protected by their proprietors as trade marks. Swiss law recognises several kinds of trade marks, which are subject to different conditions. Proprietors of labels need to decide on one of these types of trade marks, depending on the particular features of their labels. One particular category is the **guarantee mark**, which offers significant advantages for the protection of ecolabels under trade mark law.

Guarantee marks are particularly useful for guaranteeing common characteristics of goods or services from different companies. These include quality (clothes made of cotton), geographical origin (Swiss products, products from Valais), the production type (products from organic or animal-

friendly farming; environmentally friendly manufacture) and technical characteristics (products that need a specific kind of expertise or that come from fair trade). To obtain a guarantee mark, an application for registration must be submitted together with regulations governing the use of the mark. The regulations must set out the common characteristics of the goods and services for which the sign will be used as a trade mark. These common characteristics must be objective. Proprietors of guarantee marks need to supervise compliance with these common characteristics (Art. 21 para. 1 of the Trade Mark Protection Act, TmPA). The regulations governing the use of the mark must also set out the control mechanisms and appropriate sanctions for unauthorised use of the trade mark (Art. 23 para. 2 TmPA; Part 5 No 10.3 Trade Mark Guidelines).

For a sign to be registered as a guarantee mark, specific conditions must thus be met. Consequently, the guarantee mark becomes a protective instrument that fully meets the expectations of consumers and the markets regarding the use of ecolabels in trade.