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Barriers for the Strategy of Public Domain Works Protection Based on Trade Mark Registration in the Light of EU Case Law

Przeszkody godzące w strategię ochrony utworów należących do domeny publicznej opartą o rejestrację znaku towarowego w świetle orzecznictwa Unii Europejskiej

ABSTRACT

Since the term of economic copyright protection is limited and trade mark right can be extended indefinitely, there may be a desire to artificially extend copyright protection by means of trade mark rights. The main goal of the article is to assess whether this idea is feasible. Although there is a different function and scope of copyright and trade mark right, the possibility of copyright "prolongation" cannot be excluded *a priori*. It seems that mainly the original purpose of the work as such and the manner of its exploitation during the term of copyright protection are of crucial importance for the possibility of "extending" copyright protection by means of a trade mark registration after the expiration of copyright protection. However, it should be borne in mind that there are some obstacles for the trade mark registration or grounds for its invalidation resulting from the European Union Trade Mark Regulation 2017/100, that are especially difficult to overcome in the case of public domain artwork depicted in a trade mark, i.e., lack of distinctiveness, application in bad faith, inconsistency with public policy or accepted principles of morality.

Keywords: trade mark; copyright; public domain artwork; bad faith application; lack of distinctiveness; inconsistency with public policy or accepted principles of morality

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INTRODUCTION

Various kinds of trade marks can be deemed as a work of art and gain parallel protection on the grounds of copyright.[1] Moreover, some works of art are created directly for commercial purposes to be used in a function of trade marks. Of course, there are also works of art (probably the majority of them) that are created solely as pure art without any intention to be used in commerce, like, e.g., the majority of paintings or sculptures, and these are the ones that are the main subject of consideration in this article.

Admissibility of the cumulative protection has also been confirmed by the judgment of the General Court of the European Union (GCEU), which pointed out that the same sign may be protected as an original creative work by copyright and as an indicator of the commercial origin by trade mark law. It is therefore a matter of different exclusive rights based on distinct qualities, i.e. the original nature of a creation, on the one hand, and the ability of a sign to distinguish the commercial origin of the goods and services, on the other.[2] Thus, trade mark rights do not offer protection for a cultural creation as such, but only for certain functions which the cultural creation may fulfil as a distinctive sign in respect of goods and services to which it is attached.[3] However, because the term of economic copyright protection is limited and trade mark right can be extended indefinitely, there may be a desire to artificially extend copyright protection by means of a trade mark right. The main goal of the article is to assess whether this idea is achievable.

If copyright protection for the work expires, it enters the public domain. In European countries, copyright expires 70 years after the author's death.[4] When a work enters the public domain, it is no longer protected by copyright, and anyone is free to use it without the need of a permit or the payment of royalties. Therefore, it is worth considering whether it means that anyone can register without any obstacles such a work as a trade mark.

It should be borne in mind that there is no specific provision in the European Union Trade Mark Regulation No. 2017/1001[5] that can serve *per se* as an obstacle for the registration of a trade mark consisting of an artwork whose copyright

[1] For more on cumulative protection on the basis of copyright and trade marks law, see M. Senftleben, *The Copyright/Trademark Interface: How the Expansion of Trademark Protection Is Stifling Cultural Creativity*, The Hague 2021, pp. 16–22.

[2] GCEU, 30 June 2009, T-435/05, *Danjaq vs. OHIM* (Mission Productions), para. 26.

[3] M. Senftleben, *Vigeland and the Status of Cultural Concerns in Trade Mark Law – The EFTA Court Develops More Effective Tools for the Preservation of the Public Domain*, "International Review of Intellectual Property and Competition Law" 2017, vol. 48, p. 686.

[4] See footnote 39 on some additional regulations in force in France.

[5] Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ L 154/1, 16.6.2017), hereinafter: EUTMR.

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protection has expired. However, there are many examples in the case law of such cases in which registration of a mark containing a work that had entered the public domain was refused, and the decision was related to the fact of expiration of the copyright protection of the work or the work *per se*.

Therefore, the aim of this article is also to examine in what situations a trade mark application should be refused due to circumstances related to the public domain artwork included in a trade mark. It is then necessary to consider different strategies of entrepreneurs hidden behind the application for a trade mark containing a public domain work. There are two different points of view that should be taken into consideration while assessing this issue, which depend on the kind of entity applying for the trade mark registration. It is important to verify whether the applicant is the previous owner of the copyright or another third party. In the first situation, trade mark protection of a work that entered the public domain can be perceived by the previous copyright owner as a remedy for the "extension" of their copyright protection. In the second, another person (not the previous copyright owner) may be interested in such a trade mark registration because they may see the marketing potential in a work that is part of the public domain.[6] An analysis of these strategies is carried out based on the legal provisions of EUTMR that are absolute obstacles to registration of a trade mark or absolute grounds for invalidating the right to a trade mark, which include, in the main, lack of distinctiveness, bad faith application, and inconsistency with public policy or accepted principles of morality.[7]

There is also one more important obstacle to trade mark registration that results from the provisions of Article 4 (3) (b) of Directive 2015/2436,[8] which states that "Any Member State may provide that a trade mark is not to be registered or, if registered, is liable to be declared invalid where and to the extent that the trade mark includes a sign of high symbolic value, in particular a religious symbol". However, this provision will not be analysed further in this publication for at least two reasons. It has been adopted only by few EU Member States and has not been incorporated into the EUTMR. Most importantly, it has recently lost its significance due to a relevant change in the interpretation of the concept of a trade mark being

[6] See J. Chlebny, *Klauzule generalne porządku publicznego, dobrych obyczajów i złej wiary jako przeszkoda rejestracji znaków towarowych w postaci utworów należących do domeny publicznej*, [in:] *Sensum, non verba spectamus. Księga jubileuszowa Profesor Urszuli Promińskiej*, eds. W.J. Katner, M. Balcerzak, J. Chlebny, J. Janeta, Warszawa 2024, pp. 97–98.

[7] It seems that also Article 1 (e) (iii) EUTMR ("Shall not be registered signs which consist exclusively of the shape, or another characteristic, which gives substantial value to the goods") may be applied in this context. However, due to the lack of case law in this matter and its little practical significance, this issue will be omitted.

[8] Directive (EU) 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 (OJ L 336/1, 23.12.2015).

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inconsistent with a public policy or accepted principles of morality; this shall be further explained in the article.[9]

Nor will the article cover the issue of trade mark protection of works protected collaterally by copyright, as it is clearly regulated by the law and considerable attention has already been devoted in literature to analyses concerning copyright and trade mark law measures employed as means of cumulative protection of works, including various specific aspects of this issue.[10] Thus, it should be remembered that in the case of an application for a trade mark containing someone else's copyrighted work, the person entitled to the work may prohibit such registration due to an infringement of their copyright. This is so because we are dealing here with a relative obstacle to trade mark registration. However, if the trade mark containing the work is submitted by the person entitled to the work, they have the right to do so, as it is generally accepted that cumulative protection may be applied to intellectual property goods, provided that they meet the necessary protection requirements. However, if the copyright expires, the issue is no longer so clear-cut. The previously authorized entity ceases to be entitled to the work, and the work enters the public domain. The question, therefore, arises whether any entity can "download" a work from the public domain and register a trade mark containing such a work. This is a legitimate question because, as a result of trade mark registration, an exclusive right is created in relation to the goods or services specified in the application, and thus other entities are deprived of the possibility of using the work within the scope covered by the registration.

However, it should be borne in mind that the author's moral rights protection does not expire. It lasts forever. One of these rights is a right to the integrity of the work (i.e. a right to have the contents and form of the author's work inviolable and properly used). Sometimes, the use of a work in a trade mark may constitute a violation of the right to the integrity of the work, especially if the work is used in a way that is inconsistent with the ideas espoused by the creator or in a way that is contrary to the message of the work as such.[11]

[9] See J. Chlebny, *op. cit.*, p. 112.

[10] See M. Senftleben, *Vigeland…*, pp. 689–691; K. Szczepanowska-Kozłowska, *Swoboda wypowiedzi a prawo ochronne na znak towarowy*, "Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace z Prawa Własności Intelektualnej" 2013, no. 119, p. 499; S. Stanisławska-Kloc, *Rejestrowanie utworów jako znaków towarowych*, [in:] *100 lat ochrony własności przemysłowej w Polsce. Księga jubileuszowa Urzędu Patentowego Rzeczypospolitej Polskiej*, ed. A. Adamczak, Warszawa 2018, pp. 899–906.

[11] See K. Grzybczyk, *Komercyjne wykorzystanie dóbr niematerialnych (merchandising)*, [in:] *Valeat aequitas. Księga pamiątkowa ofiarowana księdzu Profesorowi Remigiuszowi Sobańskiemu*, ed. M. Pazdan, Katowice 2000, pp. 155–156.

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LACK OF DISTINCTIVENESS

Pursuant to Article 4 (1) (a) EUTMR, a trade mark is a sign which is "capable of distinguishing the goods or services of one undertaking from those of other undertakings", and according to Article 7 (1) (a) EUTMR, signs which do not conform to the requirements of Article 4 shall not be registered. In compliance with the view expressed in the doctrine, the cited assumption of Article 4 (1) (a) EUTMR refers to abstract distinctiveness of the trade mark that should be examined in isolation from a specific type of goods or services.[12] Abstract distinctiveness is expressed in the potential capacity of a given symbol to distinguish goods or services as such in general. It is the ability of a mark to identify the commercial origin of any goods or services and thereby distinguish them from goods or services originating from other undertakings.[13]

Generally speaking, works of art may have an abstract, distinctive character and may thus function as trade marks. However, in some cases, a distinctive character may not be easy to achieve, especially if the work is more complex (i.e. where it has many layers or elements). If a trade mark consists of a wide array of elements or issues, it could not be perceived as a trade mark but rather as a decoration. According to the Polish doctrine, it is believed that a sign is not suitable for distinguishing any goods (services) from other goods (services) of other undertakings if it does not meet, i.a., the requirement of uniformity.[14] A designation is uniform when it is possible to encompass the entire designation with a single cognitive act, and thus the designation should be easy to remember.[15] Therefore, both overly complex signs (e.g. consisting of over a dozen words or digits; combinations of two or more contourless colours)[16] and basic signs (e.g. a sign representing merely the simple shape of a triangle)[17] do not have a uniform character. A similar reasoning should be applied to some paintings or other graphical works of art. There are some works that are so complex that could not be encompassed by one act of perception and then remembered on this basis, like, e.g., *Guernica* by Pablo Picasso or *Panorama*

[12] See G.N. Hasselblatt (ed.), *Community Trade Mark Regulation: A Commentary*, Oxford 2015, p. 88; R. Skubisz, Skubisz R., *Zdolność odróżniająca znaku towarowego w orzecznictwie Trybunału Sprawiedliwości Wspólnot Europejskich*, "Biuletyn Politechniki Świętokrzyskiej" 2005, no. 29, p. 115; M. Trzebiatowski, [in:] *System Prawa Prywatnego*, vol. 14B: *Prawo własności przemysłowej*, ed. R. Skubisz, Warszawa 2017, p. 744; Ł. Żelechowski, [in:] *Prawo własności przemysłowej. Komentarz*, ed. Ł. Żelechowski, vol. 8B, Warszawa 2021, p. 10.

[13] R. Skubisz, *op. cit.*, p. 115.

[14] See W. Włodarczyk, *Zdolność odróżniająca znaku towarowego*, Lublin 2001, pp. 58–59; U. Promińska, [in:] *Prawo własności przemysłowej*, eds. E. Nowińska, U. Promińska, M. du Vall, Warszawa 2008, p. 186; Ł. Żelechowski, *op. cit.*, p. 12.

[15] W. Włodarczyk, *op. cit.*, pp. 58–59; U. Promińska, *op. cit.*, p. 188.

[16] J.J. Sitko, [in:] T. Demendecki, A. Niewęgłowski, J.J. Sitko, J. Szczotka, G. Tylec, *Prawo własności przemysłowej. Komentarz*, Warszawa 2015, p. 602.

[17] R. Skubisz, *op. cit.*, p. 115.

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Racławicka (*The Racławice Panorama*) by Jan Styka and Wojciech Kossak. This thesis relates not only to well-known artworks but to all of them.[18]

Lack of abstract distinctiveness, which constitutes an absolute ground for refusal under Article 7 (1) (a) EUTMR, should be distinguished from concrete/specific distinctiveness of a trade mark which is regulated in Article 7 (1) (b) EUTMR. In the latter case, the distinctiveness of a trade mark should be assessed in relation to the goods or services covered by the application.[19] The obstacle to registration resulting from Article 7 (1) (b) EUTMR may constitute a barrier to the registration of some well-known (famous) artworks as trade marks, since such works are perceived generally as works of art *per se* created by a given famous artist, not as trade marks (a designation of origin of a given product). This happens especially when the work is used by many different entities around the world for a variety of goods, such as postcards, clothes, porcelain, etc. In such a situation, there is no possibility to associate the work of art with one company like, e.g., *The Great Wave of Kanagawa* by Hokusai or *The Starry Night* by Vincent van Gogh. The decision related to the *Mona Lisa* painting by Leonardo da Vinci is a case in point. A trade mark depicting this work of art has been submitted to the German Patent and Trade Mark Office. The application has been dismissed and the German Federal Patent Court has stated that the reproduction of the famous *Mona Lisa* painting by Leonardo da Vinci is frequently used in relation to a large variety of consumer goods. Consumers will not perceive it as identifying goods from a particular source but merely as an eye-catcher.[20]

A similar decision was undertaken in 2015 by the state authorities in the Netherlands in relation to the case concerning Rembrandt's famous painting titled *Night Watch*. The applicant of the trade mark was Chiever B.V., a law firm specializing in trade mark protection, and the application was made for strontium – a chemical element. The Benelux Office for Intellectual Property dismissed the application of the trade mark depicting of this work of art, and the Court of Appeal of the Hague upheld the decision. The Court found that the average consumer would instantly recognize the painting as the work of Rembrandt, one of the world's most prominent artists, and would therefore not perceive it to be a trade mark.[21] However, in 2017

[18] Z. Ochońska indicates the painting titled *The Night Watch* as an example of a sign devoid of abstract distinctiveness. See Z. Ochońska, *Czy obraz Jana Matejki może stać się znakiem towarowym? O problematyce udzielania prawa ochronnego na oznaczenia stanowiące dzieła sztuki, znajdujące się w domenie publicznej*, "Internetowy Przegląd Prawniczy TBSP UJ" 2017, no. 3, p. 105.

[19] See G.H. Hasselblatt (ed.), *op. cit.*, 1997, p. 143, 149; R. Skubisz, *op. cit.*, pp. 115–117; K. Szczepanowska-Kozłowska, [in:] *System Prawa Prywatnego…*, vol. 14B, pp. 648–649.

[20] German Federal Patent Court, 25 November 1997, Case 24 W (pat) 188/96, BPatG GRUR 1998, p. 1022. See also M. Senftleben, *The Copyright…*, p. 106.

[21] Court of Appeals of The Hague, 29 August 2017, 200.205.771/01, *Chiever v Benelux-Organisatie voor de Intellectuele Eigendom („Nachtwacht")*, ECLI:NL:GHDHA:2017:2446, para 12. See also M. Senftleben, *The Copyright…*, p. 106.

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European Union Intellectual Property Office (hereinafter EUIPO) registered the same European Union trade mark (hereinafter: EUTM) which was submitted for registration by the same company (EUTM 016613903). Although the Dutch court dismissed the application due to the lack of distinctiveness, the EUIPO found the trade mark to be distinctive and ruled in favour of the applicant.[22]

The European Union Intellectual Property Office has registered more landmark paintings as trade marks, like, e.g. *Milkmaid* by Vermeer (EUTM 010625143 registered in 2012 on behalf of Nestle for goods in class 29 – milk, cheese, yogurt, etc., and class 30 – coffee, tea, etc.) or *Girl with a Pearl Earring* by Vermeer (EUTM 010625143 registered in 2012 on behalf of Food Investments Group B.V. for goods in class 31 – fresh vegetable and fruits). Thus, national trade mark authorities and EUIPO can vary in the ways in which they interpret and apply the provisions of EU trade mark law. Unfortunately, this can lead to contradictory outcomes. Such results from the case law indicate that the approach of EUIPO is more liberal than that of the national authorities as far as these kinds of trade marks are concerned.

It should be borne in mind that there is no remedy for the lack of abstract distinctiveness of a trade mark. This obstacle to registration cannot be overcome, as it can happen only in relation to the lack of concrete distinctiveness. If the refusal of the registration is based on Article 7 (1) (a) EUTMR, distinctiveness cannot be acquired in the course of trade, which results from Article 4 (4) EUTMR. Acquired distinctiveness means that the consumer has come to perceive the mark in question as a trade mark due to its long and well-established use in relations to given goods or services.[23] Such a situation may occur in relation to a trade mark that was inherently devoid of any concrete distinctive character. Thus, it can also apply to well-known paintings that entered the public domain and were used in the course of trade as trade marks. This conclusion also results from the decisions of the German Federal Patent Court (the *Mona Lisa* case) and the Court of Appeals of the Hague (the *Night Watch* case), as both adjudicating bodies recognized the possibility of overcoming the obstacle to registration through intensive use of the sign on products or services. Thus, an exclusion from trade mark registration based on a conflict with the public policy or the principles of morality would be more robust, since proof of the acquisition of a distinctive character through use is irrelevant as far as inconsistency with the public policy or the principles of morality is concerned.[24] The issue of the distinctiveness of the trade mark is also irrelevant for the assessment of the absolute basis for invalidating the right to a trade mark, which is bad faith application of a trade mark.

[22] See some examples in J. Chlebny, *op. cit.*, p. 100.

[23] G.H. Hasselblatt (ed.), *op. cit.*, p. 191.

[24] M. Senftleben, *No Trademark Protection for Artworks in the Public Domain – A Practical Guide to the Application of Public Order and Morality as Grounds for Refusal*, "GRUR International" 2022, vol. 71(1), p. 4.

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BAD FAITH APPLICATION

Pursuant to Article 59 (1) (b) EUTMR, a trade mark registration can be invalidated if the application has been made in bad faith. It should be emphasized that there is no basis for refusal of the registration on this ground pursuant to EUTMR. However, such a possibility has been admitted by Directive 2015/2436 and is adopted by some EU countries, such as, e.g., Poland.

Bad faith is an absolute ground for invalidation that has a subjective character, since it does not relate to the trade mark as such or the consequences of its use, but to the conduct of the applicant.[25] There is no legal definition of bad faith applications of a trade mark in EU law. However, this is an autonomous notion which should have a uniform interpretation across all EU Member States. Such reasoning results from the preliminary ruling of the Court of Justice of the European Union (CJEU) rendered in the *Malaysia Dairy* case[26] and also from the convergence Common Practice CP13 titled "Trade marks applications made in bad faith" developed by the European Union Intellectual Property Network (hereinafter: CP13) in October 2024.[27]

According to the EU case law and CP13, there are two categories of bad faith applications:

a) dishonest intention related to the use of a similar (identical) sign of a third party;
b) dishonest strategy of protecting the applicant's own marks (abuse of the trade marks' protection system).

The first definition results from the preliminary ruling of the CJEU passed in 2009 in the *Lindt* case.[28] The CJEU declared that all the relevant factors must be taken into consideration in order to assess bad faith with regard to the EUTM filings and, in particular, to the following:

a) the fact that the applicant knows or must know that a third party is using in at least one Member State an identical or similar sign for an identical or similar product capable of being confused with the sign for which registration is sought;
b) the applicant's intention to prevent that third party from continuing to use such a sign; and
c) the degree of legal protection enjoyed by the third party's sign and by the sign for which registration is sought.

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[25] U. Promińska, *op. cit.*, p. 415.

[26] CJEU, 27 June 2013, C-320/12, *Malasia Diary Industries Pte. Ltd. v. Ankenavnet for Patenter og Varemarker*.

[27] CP13 was published on March 2024 and is available at https://www.tmdn.org/network/documents/10181/2556742/CP13_Common_Communication_en.pdf/1cdbc448-b8a6-4507-9f57-ed8b780593a1 (access: 28.12.2025).

[28] CJEU, 11 June 2009, C-529/07, *Chocoladefabriken Lindt & Sprüngli*, para. 53.

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Thus, the application is made in bad faith when the applicant has dishonest intentions related to the use of a similar (identical) sign of a third party. In such a situation, we deal with the application made with the intention to undermine, in a manner inconsistent with honest practices, the interests of a third party.

According to the second definition, bad faith application occurs when an applicant has a dishonest strategy of protecting his own marks, which can be deemed an abuse of the trade marks' protection system.[29] This approach to bad faith application has been formulated by the CJEU in the *Koton* case[30] and afterwards in a preliminary ruling passed in the *Skykick* case.[31] Based on these decisions, the CJEU has broadened the definition of the EU trade mark application made in bad faith making a clear reference to circumstances not related to a third-party's designation. According to both judgments, the proprietor of a trade mark files the application for registration of the mark in bad faith if the application has been made "with the intention of obtaining, without even targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark, in particular the essential function of indicating origin".[32]

As far as the first aforementioned definition is concerned, an application of a trade mark consisting of an artwork can be interpreted as an application aimed at blocking the use of an artwork by other entrepreneurs that have already used this work on the market for the same kinds of goods. K. Szczepanowska-Kozłowska has expressed a similar opinion, noting that bad faith may manifest itself in the desire to appropriate a designation of exceptional and significant cultural value by one entity and to exclude the right to use a given designation by other entities.[33] A good example of such a situation can be the *François Rabelais* case. It is related to the trade mark depicting the image of a famous French writer François Rabelais, painted in 1601 by Léonard Gaultier. François Rabelais was a writer born in Chinon, a region in France.[34] The crucial issue in this case was the fact that these images were already used by various entrepreneurs from the Chinon region for

[29] See the cited distinction between the two categories of bad-faith applications: J. Sitko, *The Significance of Bad-Faith Premises for the Strategy of Trade Mark Protection in the Light of the Latest EU Case-Law*, "International Review of Intellectual Property and Competition Law" 2023, vol. 54, pp. 1382–1383.

[30] CJEU, 12 September 2019, C-104/18 P, *Koton Mağazacilik*, para. 46.

[31] CJEU, 29 January 2020, C-371/18, *Sky et al. v. SkyKick*, para. 75.

[32] CJEU, 12 September 2019, C-104/18 P, *Koton Mağazacilik*, para. 46; CJEU, 29 January 2020, C-371/18, *Sky plc, Sky International AG and Sky UK Ltd v. SkyKick UK Ltd and SkyKick Inc.*, para. 75.

[33] K. Szczepanowska-Kozłowska, *Swoboda wypowiedzi…*, p. 535.

[34] Paris District Court, 16 January 2020, No. 18/04810 (reference to the judgment following M. Bohaczewski, *O nowych zastosowaniach przepisów dotyczących złej wiary jako podstawy unieważnienia prawa do znaku towarowego*, [in:] *Varietate concordia. Księga jubileuszowa Profesora Ryszarda Skubisza*, eds. E. Całka, A. Jakubecki, M. Nazar, A. Niewęgłowski, R. Poździk, Warszawa 2022, p. 332).

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the promotion of their winemaking businesses. However, one of them wanted to register the label with the image of François Rabelais as a trade mark on their own. The court in France stated that the registration of the trade mark on behalf of one company would block the use of this image that had been already used by other wine producers in the Chinon region. It seems justified as the registration of these trade marks on behalf of one entrepreneur would block the use of the graphics that have already been used by other producers of wine in the Chinon region.[35]

Providing an example of the second type of bad faith application (i.e. one that relates to the dishonest strategy to protect the applicant's own marks) is not an easy task where copyright protection is an issue at hand. It is worth considering whether the trade mark application consisting of a title of a book or a picture from the book can be deemed as application made in bad faith. In my opinion, it can be assessed as bad faith application where one proves that the intention of the applicant was to extend copyright protection. In such a case, the aim of a trade mark application is the abuse of trade mark protection system, since the *de facto* applicant undertakes a dishonest strategy for the protection of his/her own marks. According to A. Kur, bad faith could be found in the application for a trade mark registration that consists of book titles for printed matter if it is filed by a publisher who attempts to exclude others from publishing the book that has fallen into the public domain.[36] In this case, the bad faith "diagnosis" appears justified as such an application aims to monopolise someone else's creative work by gaining trade mark protection to one person's favour. Although exploiting trade mark law with a view to monopolising other people's artistic creations once they have entered the public domain is rather dubious, cumulative protection of one's own work is generally permissible. However, also in the latter case the application made in bad faith cannot be *a priori* excluded, since trade mark protection should not serve as a source of other intangible assets protection. It has been reported in the doctrine that a strategy of filing trade mark applications aimed at circumventing the time-limited nature of copyright should be treated as a bad faith application provided that circumstances can be shown to indicate the applicant's dishonest intention.[37]

This situation can be observed, e.g., on the basis of a novel titled *The Little Prince* by Antoine de Saint-Exupéry.[38] In 2015, this novel entered the public do-

[35] See M. Bohaczewski, *op. cit.*, p. 333. The author believes that when a public domain work is registered as a trade mark, allegation of bad faith would actually require proof of some link between the work in question and the activity of the other entities involved.

[36] A. Kur, *Cancellation and Loss of Trade Mark Rights*, [in:] *European Trademark Law – a Commentary*, eds. A. Kur, M. Senftleben, Oxford 2017, p. 543 and the judgment of the BGH (German Supreme Court) of 5 December 2000, I ZB 19/00, *Winnetou*, cited therein.

[37] J. Chlebny, *op. cit.*, p. 115.

[38] *Ibidem*, p. 97, 115.

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main in Europe (except France).[39] In 2013 almost each of the picture depiction the book's characters, including i.a. the prince, the fox, the rose, and the baobab planet, were filed in the register of EU trade marks by Société pour l'Oeuvre et la Mémoire de Saint-Exupéry and were afforded protection. The title of the book *The Little Prince*, written in many different languages, has also been registered as EU trade marks a few years earlier. In most of these cases, registration has been made in 37 classes of goods and services, which indicates an enormously broad scope of protection. In this case, the crucial evidence of bad faith applications was the filing date of trade marks that was very close to the date of the expiration of copyright protection of the novel as an artwork. Another evidence of bad faith application can be the conduct of the applicant. If the applicant prohibits third parties from publishing the novel on the basis of trade marks protection (gained for the book title or the drawings from the book), it can, in my opinion, be deemed as the evidence bad faith application. Trade mark protection may not serve as a source of other intangible assets protection. Thus, in this case, the problem is the scope of trade mark protection. It should be borne in mind that the aim of trade mark protection does not extend to the exploitation of the work of art *per se*. A trade mark is a sign which is capable of distinguishing goods or services of one undertaking from those of other undertakings. When a trade mark consisting of a book title is registered in class 16 of the Nice Classification for paper publications, one should assess whether it can be perceived as trade mark, i.e. as a sign which informs about the origin of the product, indicating that all products bearing this sign are produced by the same publisher or related entities. When we deal with the title of a novel, it is perceived as part of an artwork rather than a trade mark (i.e. the indication of origin).

Another interesting case relates to the graffiti by Banksy and, specifically, the decision of the EUIPO Cancellation Division of 14 September 2020, which concerned the graffiti titled *Flower Thrower*.[40] The Office affirmed that the right to a trade mark cannot be used as a means of protecting a person's other rights (in this case, copyright). The owner of the mark Pest Control Office Limited (a company established by Banksy) admitted that there was no intention to use the mark; the use of the mark was initiated in order to avoid the consequences of the lack of trade mark use (i.e. a revocation for non-use). According to EUIPO, such action is inconsistent with honest practices. This decision has not been appealed against. However, Pest Control Office Ltd. appealed against another similar decision concerning a trade mark depict-

[39] Copyright protection in EU countries lasts 70 years from the death of the author. However, in France there is an additional regulation extending copyright protection in certain cases. Works of authors who died for France during World Wars I and II benefit from additional copyright protection. Copyright for works created by these authors is extended for an additional 30 years. There are also countries in the world that adopt a copyright protection period other than 70 years from the death of the author. It should therefore be noted that copyright protection is of territorial nature.

[40] EUIPO Cancellation Division, 14 September 2020, no. C 33843.

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ing a gorilla with an advertising board titled "Sandwich Board Wearing Monkey". The EUIPO Board of Appeal (BoA) did not agree with the first instance authority and did not recognise bad faith of the applicant. Consequently, the BoA reversed the ruling of the EUIPO Cancellation Division.[41] The office stated that "A creative work is eligible for protection as a trade mark, at least in principle, irrespective of whether or not that term has entered the public domain under copyright law".[42] The BoA stated that Full Colour Black Ltd. had failed to conclusively evidence that the mark's proprietor (Pest Control Office Limited) had no intention of using the trade mark as at the date of its application. It should be borne in mind that the declaration concerning the lack of intention of trade mark use has been made only in relation to the *Flower Thrower* case. Thus, it should not be transferred to the *Sandwich Board Wearing Monkey* case. Moreover, the BoA pointed out that Banksy could take advantage of a five-year grace period from the date of the application to put the trade mark to genuine use, as, according to the case law, the EUTM proprietor is not obliged to know at the filing date when he/she will start using its trade mark.[43]

These conclusions stand in harmony with the reasoning expressed in the *SkyKick* case. According to this decision undertaken by the CJEU, "a trade mark application made without any intention to use the trade mark in relation to the goods and services covered by the registration constitutes bad faith, if the applicant for registration of that mark had the intention of either undermining, in a manner inconsistent with honest practices, the interests of third parties, or of obtaining, without even targeting a specific third party, an exclusive right for purposes other than those falling within the function of a trade mark".[44] As follows from the cited reasoning, in order for bad faith to be determined, besides the absence of the intention to use the trade mark, one of two circumstances specified must also occur, i.e. infringement on third party interests or application for registration for purposes other than the essential functions of a trade mark.[45] Thus, the lack of intention to use a trade mark – at the time of its application – does not in itself constitute grounds for classifying a given application as an act of bad faith.[46] One should agree that there is no obligation of trade mark use as at the date of its application because there is

[41] EUIPO BoA, 25 October 2022, R 1246/2021-5, *Pest Control Office Ltd. vs. Full Colour Black Ltd*.

[42] *Ibidem*, para. 41.

[43] *Ibidem*, paras 74–75.

[44] CJEU, 29 January 2020, C-371/18, para. 81.

[45] J. Sitko, *op. cit.*, p. 1397; Ł. Żelechowski, *op. cit.*, p. 120.

[46] J. Phillips, *Trade Mark Law: A Practical Anatomy*, Oxford 2003, p. 460. The author formulated an analogous opinion many years before the *SkyKick* case. See also K. Stumpf, *Repeated Filings of a European Community Trade Mark*, "Journal of Intellectual Property Law and Practice" 2014, vol. 9(3), p. 227. The author believes that the EUTM system does not require an applicant to have an intention to use the mark when applying. Thus, the absence of intention to use does not constitute grounds for establishing bad faith.

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a five-year grace period. However, in my opinion, lack of intention of trade mark use as at the date of its application shall be interpret *per se* as a circumstance for bad faith application, provided that this intention can be proved beyond reasonable doubt. Such a circumstance should be interpreted as application made with intention of obtaining the exclusive right for purposes other than those falling within the function of a trade mark.[47] However, it should be admitted that lack of intention of trade mark use is extremely difficult to be proved if the applicant does not admit so themselves, as it happened in the *Flower Thrower* case. Nonetheless, such cases can easily be imagined. A case in point can be the application of a trade mark depicting *Night Watch* by Vermeer, since the application has been made by the law firm and the trade mark was applied for strontium. It is obvious that the law firm will not use such a mark for this kind of goods on the market. An analysis of these matters has led me to change my position, which I have presented in my previous publication.[48]

INCONSISTENCY WITH THE PUBLIC POLICY OR ACCEPTED PRINCIPLES OF MORALITY

A trade mark application may be rejected on the grounds that it violates public policy or accepted principles of morality under the provisions of Article 7 (1) (f) EUTMR. Analogous circumstances are stipulated in Article 4 (1) (f) of Directive 2015/2436. Although there are no legal definitions of public policy and accepted principles of morality in EU trade mark law, they are autonomous notions which should have uniform interpretation in all EU Member States. This results, i.a., from the convergence Common Practice CP14 titled "Trade marks contrary to public policy or to accepted principals of morality" (hereinafter: CP14) developed by the European Union Intellectual Property Network in October 2024.[49] Pursuant to the provisions of CP14, public policy should be understood as "a set of fundamental norms, principles and values of societies in the European Union at a given point in time. It includes, in particular, the universal values of the European Union, such as human dignity, freedom, equality and solidarity, and the principles of democracy and the rule of law, as proclaimed in the Charter of Fundamental Rights of the European Union". Its content should be ascertainable from reliable and objective sources. Whereas, accepted principles of morality refer to the "fundamental moral values and standards accepted by a society in the European Union at a given time".[50]

[47] See J. Chlebny, *op. cit.*, pp. 115–116.

[48] J. Sitko, *op. cit.*, p. 1397.

[49] CP14 was published on April 2024 and is available at https://www.tmdn.org/network/documents/10181/2569797/CP14_Common_Communication_en.pdf/5fd22402-3545-4710-a518-8ee9993ee91b (access: 28.12.2025).

[50] CP14, p. 2.

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Moreover, the CJEU in the *Constantin* case stated that "the examination is to be based on the perception of a reasonable person with average thresholds of sensitivity and tolerance", taking into account objective circumstances in which the allegedly offensive mark would be used.[51] Thus, it has been noticed in the doctrine that the perception of a model member of the society with average thresholds of sensitivity and tolerance does not always overlap with the average consumer of the goods covered by a trade mark application.[52]

According to the traditional interpretation of Article 7 (1) (f) EUTMR, the conflict with public policy and principles of morality is related to the trade mark as such, i.e. to the content of a sign and the message it carries.[53] It does not concern the consequences of the registration or use of the sign for public domain or principles of morality. This approach to the interpretation of this provision significantly limits the possibility of its application in relation to the works of art, especially those of a high cultural value.[54]

However, this approach has recently been changed by case law, as will be shown later in this part of the article. One of the most landmark judgments in this respect has been issued by the Court of Justice of the European Free Trade Association (EFTA Court) in the *Vigeland* case, which concerned sculptures of Gustav Vigeland, a very prominent Norwegian artist.[55] In view of the actual lapse of copyright protection for Vigeland's artworks, the Oslo Municipality applied for trade mark protection depicting a number of sculptures of this artist. The Board of Appeal of the Norwegian Intellectual Property Office (BoA of NIPO) rejected the applications. However, the Oslo Municipality sent a preliminary question to the EFTA Court concerning, i.a., the meaning of the principles of morality and public policy. First of all, the Court pointed out that the registration of a sign as a trade mark which consists of artwork for which the copyright protection period has expired is not in itself contrary to public policy or accepted principles of morality within the meaning of Article 3 (1) (f) of Directive 2008/95/EC[56] (at present Article 4 (1) (f) of Directive 2015/2436).[57]

According to the EFTA Court, refusal of the trade mark registration on the basis of accepted principles of morality within the meaning of Article 3 (1) (f)

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[51] CJEU, 27 February 2020, C-240/18 P, *Constantin Film Produktion GmbH v. EUIPO*, para. 42.

[52] J. Davis, Ł. Żelechowski, *Bad Faith, Public Policy and Morality: How Open Concepts Shape Trade Mark Protection*, "International Review of Intellectual Property and Competition Law" 2023, vol. 54(6), p. 885.

[53] See C. Geiger, L. Pontes, *Trade Mark Registration, Public Policy, Morality and Fundamental Rights*, [in:] *20 Years of the Boards of Appeal at EUIPO, Anniversary Book, Celebrating the Past, Looking Forward to the Future*, Alicante 2017, pp. 8–10.

[54] J. Chlebny, *op. cit.*, p. 104.

[55] EFTA Court, 6 April 2017, E-5/16, *Municipality of Oslo*. See commentary on the case: M. Senftleben, *Vigeland…*, pp. 683–689.

[56] Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (OJ L 299/25, 8.11.2008).

[57] EFTA Court, 6 April 2017, E-5/16, para. 102.

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of Directive 2008/95/EC depends on the status or perception of the artwork in a relevant EEA State and a risk of misappropriation or desecration of a work may be relevant in this assessment "in particular if registration is granted for goods or services that contradict the values of the artist, or the message communicated through the artwork in question".[58] A trade mark shall be refused on the basis of the clause of contradiction with public policy pursuant to Article 3 (1) (f) of Directive 2008/95/EC, "if the sign consists exclusively of a work pertaining to the public domain and the registration of the mark constitutes a real and serious threat to the fundamental interests of society" (i.e. the work of art "exists in public consciousness as national heritage" and the registration exploits the value of the work as a copyrighted work).[59] Moreover, the EFTA Court added that the refusal based on the ground of public policy must be based on an assessment of objective criteria, whereas an objection to a trade mark based on accepted principles of morality concerns an assessment of subjective values.[60]

Pursuant to the guidelines resulting from this judgment, the BoA of NIPO refused the registrations of the trade marks depicting Vigeland's works. In the opinion of the Office, the registrations were simply inconsistent with public policy. The Office remarked that the works of Gustav Vigeland must be considered as holding a significant cultural value to the Norwegian society and that the limited term of copyright protections is meant to safeguard fundamental societal considerations,[61] and by acquiring exclusive rights to Vigeland's works, the Oslo Municipality would not only gain a competitive advantage, but would also potentially limit public access to the works.[62]

Thus, in the *Vigeland* case, it was not the trade mark as such that was inconsistent with the principles of morality or public policy, but the registration itself of the trade mark. Thus, the EFTA Court has altered the approach to this obstacle to registration, since according to the traditional approach to this absolute ground for refusal, it is assumed that the conflict with public policy (and also principles of morality) concerns the trade mark as such, i.e. the content of a sign and the message it carries.[63] Such an altered approach also results from the *Constantin* case, where the CJEU stated that the context of trade mark use is also important for the assessment of the aforementioned absolute grounds for refusal.[64] I agree

[58] *Ibidem*, para. 92.
[59] *Ibidem*, para. 94.
[60] *Ibidem*, para. 86.
[61] Decision of BoA of NIPO of 13 November 2017 in cases: 16/00148, 16/00149, 16/00150, 16/00151, 16/00153 and 16/0015416/00148, 16/00149, 16/00150, 16/00151, 16/00153 and 16/00154, para. 14.
[62] *Ibidem*, para. 23.
[63] See footnote 47.
[64] CJEU, 27 February 2020, C-240/18 P, paras 50–51.

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with the view expressed in the doctrine that the judgment issued in the *Vigeland* case contributed to limiting attempts to register trade marks depicting works that entered to the public domain.[65]

The same conclusions relate to the trade mark application depicting a picture titled *The Battle of Racławice* by Jan Matejko, a famous Polish artist of the 19th century. Application was filed by the National Museum of Krakow. The Polish Patent Office refused the registration of this trade mark and stated that "The painting is a national asset constituting cultural heritage and as such should not be used for commercial purposes".[66] The decision was based on the provisions of Article 8 (1) of the Polish Trade Mark Law.[67]

It should therefore be considered that the obstacle to registration in question will not apply to a work that cannot be classified as a national asset that constitutes cultural heritage. Thus, the Walt Disney Company, e.g., should be able to maintain on this ground its trade mark registration depicting Mickey Mouse from the film *Steamboat Willie* even after the expiration of the copyright to this picture.[68] Copyrighted works that entered the public domain should therefore be excluded from trade mark protection on public policy grounds where the registration predominantly appropriates the cultural value of the work.

Based on the considerations presented in the article, it should be borne in mind that principles of morality or public policy are, generally speaking, norms commonly accepted in a society. Whereas the main factor of bad faith is the dishonest intention of the applicant, which shall be examined in the context of fair competition and the functions of trade marks. As a result, according to the observations already made in the doctrine, bad faith has to be interpreted with the inclusion of a subjective element in the form of the applicant's intention, whereas offenses against public policy and morality are to be assessed only objectively, since they do not depend on establishing a reprehensible intention on the part of the applicant.[69] Thus, in the former case, it is the applicant's conduct that is assessed whereas, in the latter case, it is the mark as such. However, the EFTA Court in the *Vigeland* case has slightly

[65] See S. Stanisławska-Kloc, *op. cit.*, p. 907.

[66] Decision of the Polish Patent Office of 26 January 2005, DT-Z.236532/MD.

[67] Act of 31 January 1985 on trade marks (Journal of Laws 1985, no. 5, item 17, as amended).

[68] Copyright protection for the film *Steamboat Willie* expired on 31 December 2023. As a result, the earliest versions of *Mickey and Minnie Mouse* entered the public domain on 1 January 2024. Moreover, other famous characters entered the public domain the same day, including the original *Peter Pan and Tigger*. On the history of forming the copyright protection period in the USA, which was significantly dependent on the activities taken by Walt Disney and his efforts to extend copyright protection for the graphic representation of Mickey Mouse, see K. Grzybczyk, *Na skrzyżowaniu dóbr niematerialnych – utwór w roli znaku towarowego albo wzoru przemysłowego*, [in:] *Reforma prawa własności intelektualnej*, ed. A. Adamczak, Kielce 2021, pp. 99–100.

[69] See J. Davis, Ł. Żelechowski, *op. cit.*, pp. 888–889.

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altered this strict division, extending the assessment of the principles of morality and public policy to the very filing of the mark by the applicant.[70]

CONCLUSIONS

To sum up, it is necessary to address the first question posed in the introduction. Assessing whether trade mark protection can really serve as "extension" of the copyright protection of a public domain work, we should take into account the scope of trade mark rights and copyrights protection. It is important to assess whether, on the basis of trade mark registration, third parties can be effectively prohibited from using a given work as a work of art, i.e. whether, e.g., in the case of a painting, it is possible to prohibit its reproduction on posters, postcards, bags, porcelain, etc., and in the case of literary works, whether it is possible to prohibit the publication of such a book by means of registering the title of a book as a trade mark. It is therefore important to determine the scope of copyright and trade mark rights. Pursuant to the provisions of Articles 2–5 of Directive 2001/29/EC, Member States shall provide for the exclusive right to authorise or prohibit distribution of works and direct or indirect, temporary or permanent reproduction of works as well as communication to the public of works and right of making available to the public other subject matter (except for permissible use and the exhaustion of rights).[71] Whereas, according to Article 9 (2) EUTMR and Article 5 (1) and (3) of Directive 2015/2436, the negative side of the exclusive right to a trade mark extends to such use of an identical or similar sign for the identical or similar goods or services (for any goods or services in case of trade marks with reputation) that is made in the course of trade, in relation to the goods or services[72] and provided that a sign is used as a trade mark, i.e. a sign is used to distinguish the goods or services of one enterprise from those of other enterprises.[73] Hence, copyright law offers an exclusive position in relation to the exploitation of works of art and trade marks law only grants an exclusive position as for functions which the mark fulfils regarding the goods and services.[74]

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[70] See *ibidem*, p. 889.

[71] Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167/10, 22.6.2001).

[72] For more on the subject, see M. Trzebiatowski, *op. cit.*, pp. 888–890.

[73] See R. Skubisz, J. Dudzik, *Użycie znaku towarowego konkurenta w reklamie porównawczej w świetle orzecznictwa Trybunału Sprawiedliwości Unii Europejskiej*, [in:] *Reklama. Aspekty prawne*, ed. M. Namysłowska, Warszawa 2012, s. 189; CJEU, 12 November 2002, C-206/01, *Arsenal Football Club*, para. 51; CJEU, 25 January 2007, C-48/05, *Adam Opel*, para. 37.

[74] M. Senftleben, *The Copyright…*, p. 134.

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It follows from this comparison that the scopes of these rights are different. Furthermore, copyright gives broader protection than trade mark right, since copyright of a work is not limited to the specific products/services and does not relate only to the use of the work in a course of trade in relation to the goods/services in a distinctive function. It means that it should not be easy to obtain an "extension" of copyright protection by trade mark registration. However, it could be possible to gain such effect to certain extent provided that the artwork put on a product is perceived as the designation of origin. It seems justified to present these circumstances on the basis of a specific hypothetical and practical examples related to the Mickey Mouse picture and the painting titled *The Dance* by Henri Matisse. It should be explained that on 1 January 2024, copyright to Mickey Mouse depicted in the film *Steamboat Willie* entered the public domain, and just a year later, the same happened with all the paintings of Henri Matisse.

First, one should imagine the registration of a trade mark depicting the Steamboat Willie Mickey Mouse for T-shirts. A crucial question is what can be prohibited by the owner of the trade mark consisting of a Mickey Mouse picture if a trade mark is registered for class 25 (i.e. T-shirts and other clothes). Will the trade mark owner be able to prohibit the use of the picture printed on a T-shirt (a decorative function of a sign) or only the use of the picture on a label of a T-shirt or as a logo on it (a distinctive function of a sign)? As it has already been mentioned, only the distinctive use can be prohibited by the owner of the mark. However, it seems that in the *Mickey Mouse* case, the Mickey Mouse picture printed on a T-shirt should be mostly perceived as a trade mark, since it has been used for many years on many different items exclusively by the Walt Disney Company or its licensees. One should agree with the opinion expressed in a doctrine that trade mark law substantially enhances the risk of an artificial perpetuation of intellectual property protection in relation to the works that have entered the public domain as far as the above-mentioned example is concerned.[75]

It seems to be different in the case of a painting like *The Dance* by Henri Matisse – a pure work of art, which has never been used commercially by a single enterprise during the period of copyright protection. This picture on a T-shirt should be treated in a different way than the one featuring Mickey Mouse. *The Dance* has been known as a painting, i.e. as a work of art (not as a commercial character used on many kinds of goods by one entrepreneur). In this case, the use of the painting on a T-shirt should be perceived as decoration. Consequently, the owner of such a mark should not be able to prohibit its decorative use on T-shirts by third parties. A similar conclusion refers to the title of a book registered as a trade mark, which was discussed in the section of the article devoted to the issue of filing a trade mark application in bad faith. Thus, the owner of the trade mark consisting of the title

[75] *Ibidem*, p. 263.

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of a book (which has entered the public domain) and covered goods in class 16 (i.a. paper publications) should not be able to prohibit the publication of the book by third parties. It therefore seems that mainly the original purpose of the work and the manner of its exploitation during the term of copyright protection are of crucial importance for the possibility of "extending" copyright protection by means of a trade mark registration.

The second aim of this article was to examine in what situations a trade mark application should be assessed negatively, and the registration of the mark should be refused due to the fact that trade mark contains a public domain artwork. Firstly, in the case of an application for a trade mark containing a work that has entered the public domain, registration should be refused if the mark lacks distinctiveness, which may primarily be the case for highly developed works (which therefore can be devoid of abstract distinctiveness) or for well-known artworks that lack concrete distinctiveness because they are associated by consumers with an artwork as such and not a designation indicating the origin of goods/services from a specific company. Secondly, an absolute ground for refusal appears when the intention of the applicant is dishonest. In the case where the applicant is an expired copyright holder, the dishonest intention is manifested in the desire to reactivate the rights that he or she had as the owner of copyright, whereas in the case of third parties, it will be the intention to obtain such exclusivity.[76] In both cases, such intention may manifest itself in the desire to prohibit third parties from using a given work in accordance with its intended purpose (e.g. publication of a book or broadcasting of a film) or to prohibit public use of an artwork as decoration for various types of material goods, such as porcelain, clothing, posters, etc. However, it is not possible, as a rule, to disqualify the applicant of the trade mark from registering the artwork as a trade mark if the applicant actually wants to use the work of art as a trade mark and the work meets the requirements for protection as a trade mark (especially has a distinctive character). Although, also in this case, there may appear a certain obstacle for the registration concerning works of art classified as the so-called national heritage. Such registration may violate the principle of public policy by appropriating a work that is a national asset, as discussed in detail in this article.

[76] J. Chlebny, *op. cit.*, pp. 97–98.

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ABSTRAKT

Ponieważ okres ochrony praw autorskich majątkowych jest ograniczony, a prawo do znaku towarowego można przedłużać w nieskończoność, może pojawić się chęć sztucznego przedłużenia ochrony praw autorskich za pomocą prawa do znaku towarowego. Głównym celem artykułu jest ocena możliwości realizacji tego pomysłu. Chociaż prawa autorskie i prawa do znaku towarowego mają odmienne funkcje i zakresy, możliwości wspomnianego „przedłużenia" efektu ochrony prawnoautorskiej nie można *a priori* wykluczyć. Wydaje się, że dla analizowanego zagadnienia kluczowe znaczenie ma przede wszystkim pierwotny cel utworu oraz sposób jego eksploatacji w okresie obowiązywania ochrony prawnoautorskiej. Należy jednak pamiętać, że istnieją pewne przeszkody dla rejestracji znaku towarowego lub podstawy do jego unieważnienia, wynikające z rozporządzenia Parlamentu Europejskiego i Rady (UE) 2017/100 w sprawie znaków towarowych, które są szczególnie trudne do pokonania w przypadku dzieł sztuki należących do domeny publicznej, przedstawionych w znaku towarowym, tj. brak charakteru odróżniającego, zgłoszenie w złej wierze oraz sprzeczność z porządkiem publicznym lub dobrymi obyczajami.

Słowa kluczowe: znak towarowy; prawo autorskie; dzieło sztuki w domenie publicznej; zgłoszenie w złej wierze; brak charakteru odróżniającego; niezgodność z porządkiem publicznym lub dobrymi obyczajami