

**DECISION  
of Fifth Board of Appeal  
of 7 February 2025**

In case R -1009/2024-5

**Limited liability company ‘ROCKET BEAN CAFÉ’**

29/31 Miera Street

LV-1001 Riga

Latvia

Applicant / Appellant

represented by Ieva Mona Mackaite, Imantas Street 3b-18, LV-1067 Riga, Latvia

APPLICATION for registration of a European Union trade mark No 18 880 774

**THE FIFTH BOARD OF APPEAL**

composed of V. Melgar (Chairperson), Ph. von Kapff (Rapporteur) and S. Rizzo (Member)

Registrar: H. Dijkema

gives the following

## Decision

### Summary of the facts

- 1 By an application filed on 29 May 2023, ROCKET BEAN CAFE, a limited liability company ('the applicant') sought to register the word mark

### MAGIC PUSSY

('the contested sign') as a European Union trade mark ('EUTM') for the following goods:

Class 9: *virtual goods, namely coffee, chocolate, coffee and chocolate drinks in downloadable format.*

Class 30: *coffee; tea; cocoa; coffee substitutes; cold coffee drinks; hot coffee drinks; chocolate; coffee beans.*

- 2 On 5 July 2023, the examiner informed the applicant that the contested sign was not registrable under Article 7(1)(f) EUTMR, which precludes the registration as an EUTM of signs that are contrary to public policy or to accepted principles of morality. According to the statement of the examiner, the English-speaking public concerned will immediately perceive the sign applied for to mean 'the magical female external genitalia'. This meaning is supported by the following references in the English-Latvian dictionary 'Letonika.lv':

- **MAGIC** - "magical"  
<https://www.letonika.lv/groups/default.aspx?q=magic&s=0&g=2&r=10331062>),
- **PUSSY** - "sl. vulg. (female) external genitalia"  
[https://www.letonika.lv/groups/default.aspx?r=10\\_331\\_062&q=pussy&cid=382189&&g=2](https://www.letonika.lv/groups/default.aspx?r=10_331_062&q=pussy&cid=382189&&g=2)).

The sign "MAGIC PUSSY" will be perceived by part of the public as contrary to accepted principles of morality because it is vulgar, shocking or offensive.

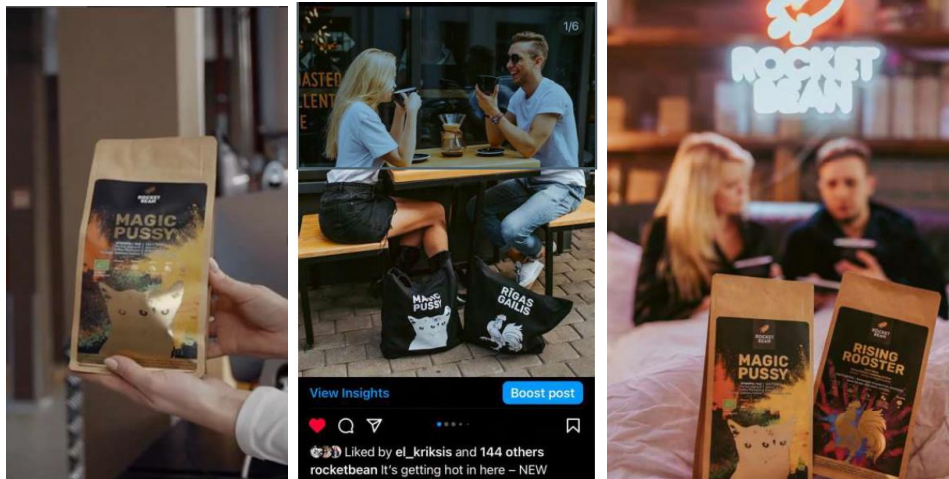
- 3 On 4 September 2023, the applicant maintained the request for registration of the contested sign, referring to the following:
  - The first meaning of 'pussy' in English is 'cat, kitty' and only its second and figurative meaning is 'used by some people to refer to female genitalia'. (<https://www.collinsdictionary.com/dictionary/english/pussy>). Therefore, the word 'pussy' in itself cannot be considered to contradict accepted principles of morality.
  - Office's previous practice shows that trade marks containing the word 'pussy' are allowed to be registered, for example:
    - PUSSY DELUXE (No 6 400 774)
    - #NOT4PUSSY (No 18 154 873)

- Pussy BUSSI (No 18 215 685)
  - PEACE & PUSSY (No 17 869 345)
  - pussy NATURAL ENERGY (No 4 580 106)
  - PUSSY LOVERS (No 15 824 477)
  - PUSSY LOUNGE (No 11 499 671)
- Many words in English have multiple meanings, including slang meanings. For other ambiguous or multiple-meaning words, the Office's practice shows that such terms, which have additional vulgar meanings in the dictionary, are not prohibited from registration, e.g. the term 'balls', which means both 'balls' and, in the vulgar sense, 'testicles' ([https://www.letonika.lv/groups/default.aspx?r=10\\_331\\_062&q=balls&cid=265\\_199&g=2](https://www.letonika.lv/groups/default.aspx?r=10_331_062&q=balls&cid=265_199&g=2)). The EUTM register contains more than 200 trade marks containing the word 'balls'. The sign 'MAGIC PUSSY' has equally figurative meaning for which there are no grounds for refusal.
- The goods applied for are not related to any sexual content or context. Therefore, the relevant public will not perceive 'MAGIC PUSSY' as referring to anything vulgar, but rather it will arouse curiosity as to what 'magic cat' effect is being referred to. This is a perfectly innocent and acceptable meaning, which is also confirmed by the use of the the sign in coffee shops, for example, in the shop 'I love coffee'.



- 4 On 30 October 2023, the examiner informed the applicant that, despite its observations, the sign applied for was not registrable under Article 7(1)(f) EUTMR.
- 5 On 1 March 2024, the applicant filed a reply requesting registration of the contested sign. In addition to the reply of 4 September 2023, the applicant submitted the following:
  - In order for an application for registration to be caught by the prohibition under Article 7(1)(f) EUTMR the sign must be directly offensive to at least a significant part of the relevant public with a medium degree of sensitivity. The grounds for refusal of registration do not specify to whom and in what way the use of the sign 'MAGIC PUSSY' in relation to coffee and its products is likely to be personally offensive. It is not sufficient for refusal of registration to be based on a subjective view that someone might find the sign inappropriate, tasteless, amusing or simply unpleasant.

- It is important that the term ‘pussy’ to refer to the female genitalia derives from an affectionate comparison that in some cultures is considered an acceptable and even endearing way of expressing an association with a kitty. This linguistic practice of comparing female genitalia with the names of small, furry animals is undoubtedly a testament to the richness and cultural diversity of language. However, this practice should not be seen as a legitimate obstacle to the use of the term ‘pussy’ in its original, innocent context and meaning of ‘cat, kitten’.
- It is not sufficient that someone may consider that a mark reflects ‘bad taste’ for it to fall within the scope of the prohibition on registration (26/09/2014, T-266/13, Curve, EU:T:2014:836, § 19; 14/11/2013, T-52/13, Ficken, EU:T:2013:596, § 22). The sign must be directly offensive at least to a significant part of the public with an average degree of sensitivity. There are no objective grounds for the sign ‘MAGIC PUSSY’ to be personally offensive to a part of the relevant public.
- The context of the use of ‘MAGIC PUSSY’ can be inferred from the materials submitted as Annex 4, which clearly express the sophisticated style of the brand without in any way compromising moral standards, for instance:



- The refusal to register the sign ‘MAGIC PUSSY’ could be interpreted as a restriction of freedom of expression, at least as far as business expression is concerned. Article 11 of the European Charter of Human Rights states that freedom of expression may be restricted only for specific purposes, namely to prevent disorder and to protect moral standards. The registration of the sign applied for does not create a risk of disorder and, as far as is known, does not undermine moral standards. Consequently, refusal to register the sign could be regarded as an unjustified restriction of freedom of expression, since it diminishes the value of the brand and, consequently, of the company by preventing the applicant from protecting and commercialising its intellectual property, without objective justification.
- 6 On 21 March 2024, the examiner adopted a decision ('the contested decision') refusing registration of the mark applied for in its entirety pursuant to Article 7(1)(f) EUTMR, in conjunction with Article 7(2) EUTMR. The decision was based on the following main findings.

- The contested sign 'MAGIC PUSSY' is applied for goods in Classes 9 and 30. The public concerned is the English-speaking public, which perceives the sign to mean: 'magical female external genitalia'. It is vulgar, shocking, rude and/or offensive and therefore contrary to accepted principles of morality within the meaning of Article 7(1)(f) EUTMR.
- English-speaking part of the European Union “ (the EU”) consumers lives not only in Member States where English is an official language, namely Ireland and Malta, but also in Member States where English is widely understood, including Cyprus, Denmark, the Netherlands, Finland and Sweden (20/01/2021, T-253/20, *It's like milk but made for humans*, EU:T:2021:21, § 35; 09/12/2010, T-307/09, *Naturally active*, EU:T:2010:509, § 26-27). The relevant public is very broad, as is the number of persons who may accidentally come into contact with the contested sign in their daily lives. The consumers concerned are assumed to have a normal level of attention.
- There is no dispute that one of the meanings of ‘pussy’ is ‘kitten’. However, it makes a difference whether the registration of the word ‘pussy’ is requested for cat food, where it would be understood as kitten food, or for other goods for which the word ‘pussy’ will have a completely different conceptual meaning. The applicant's reference to linguistic practice where female genitalia are compared to the names of small, furry animals, which undoubtedly reflects the richness and cultural diversity of the language, is not applicable in the present case, since the word 'pussy' is vulgar, shocking, rude and/or offensive.
- In addition, account should be taken of the fact that the goods in question are freely accessible and/or visible to children, adolescents, as these goods do not have age restrictions on their sale, as for example alcohol, tobacco, erotic and pornographic goods have. The applicant had the opportunity to submit (with references) substantiated information or evidence that the sign 'MAGIC PUSSY' does not contradict with existing accepted principles of morality in the aforementioned territories, but the applicant failed to do so. The absence of such evidence precludes registration of the sign applied for.
- The applicant has incorrectly stated that the English-speaking consumer in the EU would not understand the vulgar meaning of the term 'MAGIC PUSSY' but would instead perceive it to mean ‘magic cat’. In English, a ‘magic cat’ is a ‘magic cat’, not a ‘magic pussy’. The applicant has not provided any substantiated information or evidence that the sign applied for in all the abovementioned countries (Ireland, Malta, Denmark, Cyprus, the Netherlands, Finland and Sweden) is not contrary to accepted principles of morality.
- The application of Article 7(1)(f) EUTMR does not restrict the principle of freedom of expression (Article 10 'Freedom of expression' of the European Convention on Human Rights), since refusal of registration merely means that the sign is not protected under trade mark law but does not prevent the sign from being used, even in business (09/03/2012, T-417/10 *¡Que bueno ye! Hijoputa* (fig.), EU:T:2012:120, § 26).

- The applicant's wish and vision as to how the word sign applied for will be used in the future is irrelevant as it does not remove the ground for refusal under Article 7(1)(f) EUTMR.
  - As regards the applicant's argument that the Office has already registered a number of similar trade marks, it should be noted that, according to settled case-law, 'decisions to register a sign as a trade mark of the European Union are taken in the exercise of limited powers rather than discretion'. Consequently, the registrability of a sign as an EUTM must be assessed solely on the basis of the interpretation of EUTMR and not on the basis of the Office's previous practice (15/09/2005, C-37/03 P, BioID EU:C:2005:547, § 47; 09/10/2002, T-36/01, Glass pattern, EU:T:2002:245, § 35). Moreover, the trade marks cited by the applicant are not directly comparable with the contested sign, since the goods and services concerned are different. The signs are not identical since all the verbal and/or figurative elements are not identical or similar. The mere fact that the verbal element 'PUSSY' is contained in other registered trade marks does not mean that the sign applied for is registrable.
  - The applicant's submissions concerning the use of the sign applied for are irrelevant as they do not overcome the grounds for refusal. Moreover, the application is filed for a word mark, not a figurative mark.
  - The applicant has not provided any specific and substantiated information demonstrating that the sign applied for in the relevant market sector in Ireland, Malta, Denmark, Cyprus, the Netherlands, Finland and Sweden is not contrary to accepted principles of morality, which would invalidate the expert's analysis.
- 7 On 14 May 2024, the applicant filed an appeal against the contested decision, requesting that the decision be annulled in its entirety. The statement of grounds of appeal was received on 20 July 2024.

### **Grounds for appeal**

- 8 The applicant claims that the Board should annul the contested decision and declare that the sign 'MAGIC PUSSY' meets the requirements for registration as an EUTM. The arguments put forward by the applicant in support of its appeal that the contested sign is not contrary to accepted principles of morality in relation to the goods applied for can be summarised as follows:
- The refusal to register the mark is based *a priori* on the Office's position that the sign 'MAGIC PUSSY' as a whole is contrary to accepted principles of morality, ignoring the fact that the sign consists of two words, none of which in itself is contrary to public policy or accepted principles of morality.
  - In refusing the registration, the Office, by referring to the translation of the term 'pussy' in the English- Latvian dictionary 'Letonika', has shown and analysed only the vulgar meaning of the word, completely ignoring the primary meaning of the word which is 'pussy-cat, kitten'.
  - Many words in the English language have multiple meanings, including slang meanings, because it is human nature to give nicknames. For other ambiguous or

multiple-meaning words, the Office's practice shows that such terms, which have additional vulgar meanings in dictionaries, are not prohibited from registration, for instance, the word 'balls', like the word 'pussy', is included in many EUTMs.

- The refusal to register the sign 'MAGIC PUSSY' does not comply with the practice of the Office and the IP Offices of other EU Member States which allow the inclusion of the word 'pussy' in trade marks. This current practice is the only one that the trade mark proprietor could have counted on when assessing the registrability of the sign on its merits before filing the application for registration, also in view of the absence of case-law on the non-registrability of this sign. Consequently, the refusal of the sign applied for is contrary to the principle of legitimate expectations.
- Given that the Office has accepted a number of trade marks containing the word 'pussy', it is logical to conclude that the addition of the word 'magic', which is a polite and magical addition to the sign, reduces the likelihood that the trade mark could be perceived as personally offensive.
- Even if one accepts that the word 'pussy' is nowadays also used as an erotic word to refer to the external genitalia of women, one cannot agree with the Office that the mention of the external genitalia of women is vulgar or contrary to the general principles of morality. For the majority of the public, female external genitalia are associated with pleasure, fertility, passion and other pleasurable things, values and associations that are important for the survival of humanity.
- In refusing registration of the sign applied for, no account has been taken of the perception of the meaning of the sign in the context of the goods applied for. Since the word 'pussy' has several meanings and only one of them is socially accepted as ambiguous, it is not possible, in the context of the goods applied for, to perceive the sign as personally offensive and contrary to accepted principles of morality. Moreover, the Office has not substantiated how and in what context the public concerned would be offended by the use of the sign 'MAGIC PUSSY' specifically in relation to coffee, tea, cocoa, coffee substitutes, chocolate, coffee beverages and coffee-related digital products.
- In the absence of case-law on the registrability of the sign 'pussy', we cannot agree with the Office's position to equate the sign 'MAGIC PUSSY' with unquestionably unambiguously offensive signs such as 'SCREW YOU' or '¡Que buen u ye! HIJOPUTA'.
- The applicant's arguments concerning the restriction of freedom of expression have not been properly assessed. Article 11 of the European Charter of Human Rights provides that freedom of expression may be restricted only for specific purposes, namely the prevention of disorder and the protection of morals. The registration of the sign 'MAGIC PUSSY' does not create a risk of disorder or undermine moral standards. Consequently, refusal to register the sign applied for could be considered as an unjustified restriction of freedom of expression, since it diminishes the value of the brand and consequently of the company, preventing the applicant from protecting and commercialising its intellectual property, without objective justification.

## Reasons

- 9 The appeal complies with Articles 66, 67 and Article 68(1) EUTMR. It is admissible. The appeal is also well-founded.

### *Article 7(1)(f) EUTMR*

- 10 Article 7(1)(f) EUTMR provides that trade marks contrary to public policy or to accepted principles of morality shall not be registered.
- 11 The general interest justifying the absolute ground for refusal provided for in Article 7(1)(f) EUTMR is to prevent the registration of signs which, at the time of such use, would be contrary to public policy or to accepted principles of morality in the territory of the EU. That general interest is assessed by focusing on the use of the sign applied for as a trade mark (26/09/2014, T-266/13, *Curve*, EU:T:2014:836, § 13; 15/03/2018, T-1/17, *La Mafia SE SIENTA A LA MESA* (fig.), EU:T:2018:146, § 25; 16/05/2024, R 260/2021-G *COVIDIOT* (fig.), § 27; 25/11/2024, R 2307/2020-G *Maricón perdido*, § 18).
- 12 The assessment of whether a sign is contrary to public policy or to accepted principles of morality must be carried out with reference to the perception of that sign, when being used as a trade mark, by the relevant public within the EU or part of the Union. That part may, in some circumstances, be comprised of a single Member State (20/09/2011, T-232/10, *Representation of the coat of arms of the USSR*, EU:T:2011:498, § 50).
- 13 According to the grounds of the contested decision, the sign 'MAGIC PUSSY' is contrary to accepted principles of morality.
- 14 As the EUTMR does not provide a definition or interpretation of the term 'accepted principles of morality', it must be interpreted in the light of its ordinary meaning and the context in which it is generally used.
- 15 The term 'accepted moral principles' in its usual meaning refers to the basic moral values and standards to which a society adheres at a given time. These values and standards, which are likely to change over time and vary spatially, must be determined in accordance with the social consensus prevailing in a given society at the time of the assessment. In determining them, due account must be taken of the social context, including, where appropriate, the cultural, religious and philosophical differences that characterise it, in order to assess objectively what the society considers morally acceptable at the time. In this respect, it is not sufficient that the sign in question to be regarded in bad taste, but there must be a clear violation of accepted principles of morality (27/02/2020, C-240/18 P, *Fack Ju Göhte*, EU:C:2020:11, § 39, 41, 55; 25/11/2024, R 2307/2020-G *Maricón perdido*, § 23-24).
- 16 In the context of the application of Article 7(1)(f) EUTMR, the examination of whether a sign in respect of which an application for registration of an EUTM has been made is contrary to accepted principles of morality must include an assessment of all the circumstances of the case in order to determine how such a sign would be perceived by the relevant public if it were used as a trade mark for the goods or services applied for (27/02/2020, C-240/18 P, *Fack Ju Göhte*, EU:C:2020:11, § 40).



- 17 The assessment of whether a sign is contrary to accepted principles of morality must be based on the perception of a reasonable person with an average threshold of sensitivity and tolerance, taking into account the context in which the trade mark may be encountered and, where appropriate, the particular circumstances specific to that part of the territory of the Union. In that regard, account must be taken of elements such as legislation and administrative practice, public opinion and, where appropriate, the way in which the relevant public has reacted in the past to the sign or similar signs, as well as any other factor which may make it possible to assess the perception of that public (27/02/2020, C-240/18 P, Fack Ju Göhte, EU:C:2020:11, § 42).
- 18 The assessment to be made in this way cannot be limited to an abstract assessment of the trade mark applied for or of its individual elements, but must establish - in particular where the applicant for registration has relied on circumstances which may call into question the fact that the relevant public perceives that trade mark as contrary to accepted principles of morality - that that public will perceive use of that trade mark in the particular and current social context as contrary to the fundamental moral values and norms of society (27/02/2020, C-240/18 P, Fack Ju Göhte, EU:C:2020:11, § 43).
- 19 When evaluating the circumstances that justify the refusal, the interests of the applicant must be balanced against the public interests underlying the provisions of Article 7 EUTMR. The registration of a mark as an EU mark is caught by the absolute ground for refusal under Article 7(1)(f) as being contrary to accepted principles of morality that if, inter alia, it is deeply offensive to the public that encounters it (05/10/2011, T-526/09, PAKI, EU:T:2011:564, § 12). However, being offensive is far more than merely being irreverent or distasteful. A sign crosses the boundary between those concepts by being perceived as seriously abusive and likely to cause deep offence (25/11/2024, R 2307/2020-G Maricón perdido, § 25).

*The relevant public*

- 20 It should be noted that the relevant public is a broad concept, not limited to the public to which goods and services are directly addressed. Account must be taken of the fact that signs refused on such grounds may offend not only the public concerned but also other persons to whom those goods and services are not directly addressed but who may encounter the sign incidentally in their everyday life (14/11/2013, T-52/13, FICKEN, EU:T:2013:596, § 19; 26/09/2014, T-266/13, Curve, EU:T:2014:836, § 19; 25/11/2024, R 2307/2020-G Maricón perdido, § 34).
- 21 Moreover, the examination under Article 7(1)(f) EUTMR is to be based on the perception of a reasonable person with average thresholds of sensitivity and tolerance (27/02/2020, C-240/18 P, Fack Ju Göhte, EU:C:2020:11, § 42; 09/03/2012, T-417/10, ¡Que bueno ye! Hijoputa (fig.), EU:T:2012:120, § 21; 14/11/2013, T-52/13, FICKEN, EU:T:2013:596, § 21; 25/11/2024, R 2307/2020-G Maricón perdido, § 30).
- 22 Accordingly, the assessment of the existence of that ground for refusal cannot be based either on the perception of that part of the relevant public which is easily offended or on the perception of that part of that public which is insensitive or permissive with regard to the use of vulgar and inappropriate terms (09/03/2012, T-417/10, ¡Que bueno ye! Hijoputa (fig.), EU:T:2012:120, § 21; 26/09/2014, T-266/13, Curve, EU:T:2014:836, § 28; 25/11/2024, R 2307/2020-G Maricón perdido, § 31).

- 23 The contested sign is applied for *virtual goods, namely coffee, chocolate, coffee and chocolate drinks in downloadable format*, in Class 9, and *coffee; tea; cocoa; coffee substitutes; cold coffee drinks; hot coffee drinks; chocolate; coffee beans*, in Class 30. Given that the goods applied for in Class 30 are consumer goods, the relevant public to which they are addressed and which may incidentally come into contact with the sign applied for in their daily lives is very wide. The same applies to the virtual goods applied for in Class 9, which are, by their very nature, virtual representations of the foodstuffs applied for in Class 30. The availability of information technology products and services today, including in the virtual gaming and virtual entertainment space (for instance, in metaverse), allows virtual goods to be used by persons with no prior knowledge in information technology. The growing popularity of virtual platforms and online experiences shows that the relevant public is not limited to virtual entertainment specialists or enthusiasts but comprises a broad segment of society with a normal level of attention and understanding (13/09/2023, R 275/2023-4 TVAR VIRTUÁLNÍ STŘELNÉ ZBRANĚ (fig.); § 20-21).
- 24 Since the sign applied for consists of two English words 'magic' and 'pussy', the relevant public in this case is, as the contested decision correctly establishes, the English-speaking public of the EU, which includes the Member States where English is an official language or in which English is widely understood.

*Perception of the contested sign*

- 25 The contested decision is based on the consideration that the relevant public will perceive the sign 'MAGIC PUSSY' as shocking and offensive and therefore contrary to accepted principles of morality, since the word 'PUSSY' is a vulgar term for female external genitalia.
- 26 The assessment of the term applied for is based by the examiner solely on dictionary references, namely the English-Latvian dictionary 'Letonika' (<https://www.letonika.lv>), one of the meanings of the word 'pussy' being that referred to by the examiner in adopting the contested decision. Contrary to the examiner's findings, that Latvian-English dictionary does not support that the term is shocking and offensive. It merely indicates that is a 'vulgar slang term'. However, not every vulgar word is shocking and offensive and must be refused.
- 27 Nor does the Collins Dictionary quoted by the applicant before the examiner is more illustrative:

## Definition of 'pussy'



### pussy

(pʊsi)

Word forms: pussies

#### 1. countable noun

Pussy is a child's word for a cat.

#### 2. countable noun

Some people use pussy to refer to a woman's genitals.

[informal, very rude]

Collins COBUILD Advanced Learner's Dictionary. Copyright © HarperCollins Publishers

At most it can be read from that extract that the first meaning of the word 'PUSSY' is 'a child's word for a cat', while its secondary and figurative meaning is 'informal and very rude', when people use 'pussy' to refer to a woman's genitals' (<https://www.collinsdictionary.com/dictionary/english/pussy>).

- 28 The meaning of the word element 'MAGIC' is 'of or relating to magic; possessing or considered to possess mysterious powers; unaccountably enchanting; wonderful; marvellous; exciting' (<https://www.collinsdictionary.com/dictionary/english/magic>).
- 29 The perception of the sign applied for must be assessed in relation to the goods or services applied for. In the present case, the nature of the goods concerned, whether they are real-world products (*coffee; tea; cocoa; coffee substitutes; cold coffee drinks; hot coffee drinks; chocolate; coffee beans*) or virtual representations of those products, is not directly related in any way to any of the meanings of the word 'PUSSY' or the sign applied for 'MAGIC PUSSY'.
- 30 Therefore, the sign 'MAGIC PUSSY' will at first sight be perceived by part the relevant public as a reference to a magical pussycat or kitten, like in a fairy tale or fantasy story, as claimed by the applicant. It should not be ignored that 'pussycat' can also be used as a tender, not offensive pet name or nick name for a girl, such as in the song 'What's New Pussycat' by Tom Jones.
- 31 However, it cannot be excluded that part of the relevant public will also perceive the term 'PUSSY' within the sign in its secondary, vulgar and rude sense. It is the perception of this part of the public, that may not be an insignificant part of relevant public, which is important for the assessment of whether the sign applied for is contrary to accepted principles of morality.
- 32 However, firstly, the application for registration is not filed for the word 'PUSSY' on its own and that the word 'PUSSY' has several meanings, the first of which is 'pussycat, kitten'. In that respect, the sign 'MAGIC PUSSY' applied for differs significantly from the cases cited in the contested decision in which the sole or primary meaning of the sign for which registration was refused was very rude and/or deeply shocking and therefore offensive to part of the relevant public, namely 'SCREW YOU' (05/07/2006, R 495/2005-G, SCREW YOU), '¡Que bueno ye! Hijoputa' (T-417/10, ¡Que bueno ye! Hijoputa (fig.), EU:T:2012:120)), 'La Mafia SE SIENTA A LA MESA' (15/03/2018,

T-1/17, *La Mafia SE SIENTA A LA MESA* (fig.), EU:T:2018:146), or other cases of similar character to which the contested decision does not refer, namely ‘FICKEN’ (14/11/2013, T-52/13, *FICKEN*, EU:T:2013:596), ‘CURVE’ (26/09/2014, T-266/13, *Curve*, EU:T:2014:836), ‘KONA’ (20/06/2019, R 1363/2018-1 *Kona*), and ‘MARICÓN PERDIDO’ (25/11/2024, R 2307/2020-G *Maricón perdido*) which was rendered after the contested decision.

- 33 Second, the word 'MAGIC', which qualifies the word 'PUSSY' and which has a positive, even laudatory connotation, does not in any way increase the perception of the sign applied for with a possibly offensive meaning, but on the contrary, it reduces the likelihood of such a perception even among public likely to be particularly sensitive to the use of this ambiguous word.
- 34 Third, as already indicated above, the goods applied for are in no way directly or indirectly related to the rude and obscene meaning of the word 'PUSSY'.
- 35 In view of the above, the likelihood that the relevant public will perceive 'MAGIC PUSSY' as a rude, deeply shocking and offensive sign in relation to the goods applied for is negligible.
- 36 It is extremely difficult to determine whether a sign crosses the line between a merely ambiguous sign, which is vulgar and sexually suggestive and may qualify as indecent and of bad taste, and one which is clearly rude, deeply shocking and offensive, and thus contrary to accepted principles of morality. If that threshold is crossed, the sign has no place in the trade mark register. However, aspects of bad taste in the choice of a trade mark are not regulated by trade mark law (06/07/2006, R 495/2005-G, *SCREW YOU*, § 19).
- 37 Bad taste and morality are different concepts. As the Court has held, it is not sufficient for the application of Article 7(1)(f) EUTMR that the sign in question is deemed to be of bad taste (27/02/2020, C-240/18 P, *Fack Ju Göhte*, EU:C:2020:11, § 41). A sign found to be in bad taste is one which is gross, unrefined or indelicate but is not offensive to a person. Such signs do not violate accepted principles of morality (Common Communication ‘CP14. Trade marks contrary to public policy or to accepted principles of morality’, April 2024, p. 7).
- 38 In the present case, there are no sufficient reasons to consider that this threshold has been crossed. Even if it is assumed that part of the relevant public, confronted with the sign 'MAGIC PUSSY', without any additional verbal or graphic elements (as applied for), would perceive the word 'PUSSY' with its rude and inappropriate meaning, it is not insignificant that the word 'MAGIC' has a positive and laudatory meaning which in any event diminishes the perception of the sign applied for in such a way that it is likely to deeply shock and offend that part of the relevant public.
- 39 The fact that the sign applied for is likely to be deeply shocking and offensive only to part of the public with particularly puritanical views is not sufficient. At the same time, there is no reason to allow registration of a sign merely because it will not shock and offend an equally small part of the public who find even the most vulgar and obscene words acceptable. As noted above, the perception of the sign applied for must be assessed from the point of view of persons with an average level of sensitivity and tolerance. Given the ambiguity of the term 'PUSSY', there are no sufficient reasons to establish that the sign is

likely to cause deep shock and offence to the relevant and thus be contrary to accepted principles of morality within the meaning of Article 7(1)(f) EUTMR.

- 40 The above assessment of the sign applied for is in fact confirmed by the Office's previous practice on which the applicant relies on.
- 41 It is true that the EUTM registration system is independent and decisions on the registration of a sign as an EUTM are taken in the exercise of limited rather than discretionary powers. Consequently, the registrability of a sign as an EUTM must be assessed solely on the basis of the interpretation of the EUTMR and EU case-law, and not on the basis of the Office's previous practice (15/09/2005, C-37/03 P, BioID, EU:C:2005:547, § 47).
- 42 However, the Court has recognised that the Office must exercise its competence in accordance with general principles of EU law, including the principle of equal treatment and the principle of sound administration. (28/06/2018, C-564/16 P, DEVICE OF A JUMPING ANIMAL / PUMA et al., EU:C:2018:509, § 60).
- 43 The Court of Justice has stipulated that, having regard to those principles, EUIPO must take into account the decisions previously taken in respect of similar applications and consider with especial care whether it should decide in the same way or not, since the way in which those principles are applied must be consistent with respect for the principle of legality, which means that the examination of any trade mark application must be stringent and full, and must be undertaken in each individual case (28/06/2018, C-564/16 P, DEVICE OF A JUMPING ANIMAL / PUMA et al., EU:C:2018:509, § 61; 20/12/2023, T-189/23, my mochi (fig.), EU:T:2023:853, § 41).
- 44 In the light of these principles, the refusal to register the sign 'MAGIC PUSSY' is inconsistent with the Office's practice on the registrability of signs containing the word 'PUSSY'. It is not clear how the sign applied for differs from a number of EUTMs referred to by the applicant, in particular 'PUSSY DELUXE' (No 6 400 774, for goods in

PUSSY



Classes 16 and 25), LOVERS (No 15 824 477, for goods in Class 25), 'PUSSY LOUNGE' (No 11 499 671, for goods in Classes 9 and 16, and services in class 41), 'Pussy BUSSI' (No 18 215 685, for goods in Class 3, and services in Class 44),



(No. 4 580 106, for goods in Classes 32 and 33), '#NOT4PUSSY' (No 18 154 873, for goods in Classes 5 and 25, and services in Class 41).

- 45 It is true that those applications are not at issue in the present proceedings. However, the contested decision has no appropriate reasoning why the public's perception of the word 'PUSSY' has changed to such an extent that, at the time of the application for the contested sign, the Office's previous practice could be regarded as erroneous and therefore could not effectively be relied on by the applicant.

*Conclusion*

- 46 In light of all the foregoing, the circumstances of the case do not show that the contested sign is contrary to accepted principles of morality within the meaning of Article 7(1)(f) EUTMR.
- 47 The appeal is therefore well-founded. The contested decision should be annulled, and the case should be remitted back to the examiner to proceed further with the registration process.

**Order**

On the following grounds

THE BOARD

hereby:

- 1. Annuls the contested decision.**
- 2. Remits the case to the examiner to proceed further with the registration process.**