

PUBLIC POLICY AND MORALITY IN TRADEMARK LAW

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Abstract

The existence of signs registered as trademarks (national, European, international) is necessary in the public interest, as they serve producers of goods and services and consumers alike. While any sign may in principle constitute a trademark if it is capable of distinguishing the goods and services of one undertaking from those of other undertakings and if it can be represented in a register (of trademarks) in such a way as to enable determination of the subject-matter of the protection conferred, the scope of registrable signs is limited by two categories of grounds established by law (EU Regulation) with a view to: (i) the effective protection of the rights previously acquired by other persons and the prevention of the risk of confusion/association between the goods/services of different traders, which are „relative grounds for refusal of registration”, and (ii) the prevention of registrations and, where appropriate, the invalidation of registrations of the signs which, objectively, cannot constitute trademarks for intrinsic reasons (impossibility of representation, lack of distinctiveness, shape required by the nature of the goods, shape necessary to obtain a technical result, shape which gives substantial value to the product), or extrinsic ones (they must be available to everyone because they are of use to trade in general, or are misleading as to the nature, quality or geographical origin of the product/service, are protected against use in trade as being „of special public interest” and belong to, and are used by, the states, international organizations, and/or other public entities, including coats of arms, logos, seals, Olympic signs, but also those which are contrary to public order and public morality), which qualify as „absolute grounds for refusal of registration”.

*The grounds for refusal of registration and/or, where appropriate, for declaration of invalidity of registered trademarks on account of coming into conflict with public order or public morality in the European Union and in the USA are not few, quite the opposite, but the relevant jurisprudence is not uniform. For example, of the 81 applications for registration as trademarks of a number of signs, among them the word „mafia”, 51 were rejected, 20 were granted, and 5 are under examination, one of the applications (for the **Coffemafia** trademark) was granted in 2020, although in 2016-2018, the Boards Appeal and Revocation (Cancellation) of the EUIPO, and subsequently the EU Court, at the request of the Italian Republic, ruled the „**La Mafia se sienta a la mesa**” trademark to be invalid on the grounds that the word „mafia” was contrary to public order and its use was detrimental to public interest. However, despite the „**Fack Ju Göhte**” trademark being ruled to be contrary to public morality by the EUIPO and the EU Court, the Court of Justice of the European Union allowed its registration by ruling it was not contrary to public morality. In the USA, which seems to have an extremely interesting and well-reasoned jurisprudence, things aren’t any different. A number of six trademarks containing the word „**Redskins**” (**red skin**) belonging to the Washington Redskins football team (currently under a different name), registered in the 60s and 70s, challenged at registration in 1992, then in 2014, after a first decision rejecting the application, following a second application (supported by the US President and 50 senators), were revoked on the grounds of being discriminatory against the Native Americans. However, the „**The Slants**” (from „slanted-eye”, a pejorative term used to describe Asians) walked an entirely different path. The application (filed in 2006) to register it as a trademark for entertainment services by an all-Asian band of the same name (**The Slants**) was rejected by the U.S. Patent and Trademark Office - USPTO. Then, after a lengthy legal battle it was allowed for registration, with the courts, including the Supreme Court, ruling that the Lahman Act (i.e., the U.S. trademark law) provisions on the discrimination clause are contrary to the Constitution and the fundamental right to free speech.*

*These judgments, plus another one on the sign for which registration was requested, and refused, as „**CANNABIS STORE AMSTERDAM**”, an EU trademark, are underlying our examination of such notions as „general/public interest”, „public order” and „public morality”, based on the finding that while important and used frequently, they are neither defined nor analysed in the legal doctrine and jurisprudence, and are used as something that needs no explanation. Such a need exists, though.*

*After analysing them, we were able to issue our (rather critical) opinions on the EU Court judgment of 15 March 2018 that ruled the invalidity of the „**La Mafia se sienta a la mesa**” trademark, which we find to be wrong*

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on the merits and, in any case, to be lacking the necessary supporting documents, while also infringing the fundamental right to free speech. However, we also found that the revocation of the „**La Mafia se sienta a la mesa**” trademark on the grounds of conflicting with the public order did not serve its purpose because it is not possible to prohibit the use of the sign as an unregistered trademark, because that sign is still successfully in use, because the network of restaurants that continue to use it is thriving and will even expand to other countries, and because the EU Court's decision (which probably would not have been upheld by the CJEU if appealed, as we could conclude from analysing the judgment issued in the „**Fack Ju Göhte**” trademark) has contributed to its growing reputation, so it may be claimed as a well-known trademark in the future, which makes the victory of the Italian Republic, which filed the application for declaration of invalidity, a bitter one. And also because the word **MAFIA** is at the centre of the debate, we considered it important and sought to identify its origins and uses, as well as denotations and connotations.

Keywords: public interest, general interest, public order, public morality, absolute grounds for refusal of registration, trademarks contrary to public order, trademarks not contrary to public morality, „**La Mafia se sienta a la mesa**”, „**Fack Ju Göhte**”, „**The Slants**”, „**Redskin**”, failure to declare invalidity.

1. The forbidden fruit of trademark law: the signs contrary to public law and good morals and the legal disputes

Nick Squires, an Oxford University-educated journalist who has worked in Hong Kong, Australia, Africa and the United Kingdom, stopped in 2008 in Italy, where he has been investigating, analysing, writing extensively and engagingly in a variety of fields. Of the writings we have been able to read, two, seemingly unrelated, have caught our attention.

The first is the one of 21st of April 2022¹ and from which we learn (with envy and admiration), that to save from extinction by depopulation (it still has only 90-140 inhabitants of 2,500 as it had before the First World War), a village called Calascio in the Apennines, is to receive from the Italian government €20 million of an "unprecedented €200 billion grant and low-interest loans that the European Union is giving Italy to help it recover from the post-pandemic economic crisis".

The second (but not his only article dedicated to the Italian Mafia), dated 22.02.2014, is entitled "**Italians take a stand against "Mafia" branding in Spanish restaurants**" and describes the outrage of Italians at the use in a figurative brand used in Spain for a restaurant chain of a word synonymous with absolute evil in Italy. It is an article that has an explanation that has to do with the position of the state authorities and the Italians towards the mafia in their country and that has had unexpected consequences, because the Italian Republic has requested the cancellation of the European Union trademark "**La Mafia se sienta a la mesa**" (**The Mafia sits at the table**), the EUIPO and the TEU having definitively decided in 2018 (more than 10 years after its registration by the EUIPO) to cancel it. But the consequences of the invalidation – which we had the opportunity to comment on in various ways below – are far from what the trademark's challengers expected. And perhaps the trademark proprietors did not foresee them either.

Indeed, the consequences were formally important for Italy which obtained the cancellation of the trademark "**La Mafia se sienta a la mesa**", because in fact, the Spanish owners of the trademark definitively outlawed by the General Court of the European Union in its Judgment of 15 March 2018 have gained not lost. The business in Spain of restaurants operating in a franchise network under a distinctive sign containing the verbal elements "**La Mafia se sienta a la mesa**" has not only continued to exist and be used, it has also expanded and, according to the owners, the franchise is to cross the thin border that still exists between EU member countries. And one of the restaurants operates in Spain in Alicante, the host city of the EUIPO.

Was the application for registration of the trademark "**La Mafia se sienta a la mesa**" the result of an act of frivolity or an inspired choice? Is the sign, as applied for registration, an original creation eligible for copyright protection? Did the trademark applicants or their successors see the potential of the trademark since they also created a company with the trade name "**La Mafia Franchises SL**" to exploit the trademark as a restaurant franchise?

Was the EUIPO wrong in 2006 when it granted the application for registration of the mark "**La Mafia se sienta a la mesa**"? Were the judges of the EUIPO and the General Court of the European Union wrong, more than 10 years after its registration, when they decided that the mark was contrary to public order and invalidated it on that ground?

¹ Available on *Italy is investing heavily to bring life back to its dying villages – CSMonitor.com* In his article he justifies and asks: WHY I WROTE THIS. *When countries try to save dying villages, is it better to spread resources widely among all needy communities or to invest heavily in a select few? Italy is trying the latter.*

The context is, we believe, appropriate to recall that 81 trademark applications containing the word element "**mafia**" have been filed with the EUIPO, of which 20 have been accepted for registration, 5 are under examination and the remaining 56 have been denied registration.

Among those registered are "**Mafia Poker**" (filed for registration in 2013 and admitted for registration 2014), "**Mafia Clowns**" (filed for registration in 2015), "**House Mafia**" (filed for registration in 2010, owner SSA Merchandise Ltd, the same owner of the trademark "**Swedish House Mafia**"), "**coffeemafia**" (filed for registration in 2020 and registered in 2021 by a German Simon Planken), "**Girl Mafia**" (with figurative elements, UK owner).

Among those denied registration are: "**Mafia**" (German applicant), "**Mafia Wars**" (US applicant), "**Wagyumafia**" (Japanese applicant), "**Mafia and Crime We are la Familia**" with the figurative element a skull and two guns (German applicant), "**ToxicMafia**" (Spanish applicant), "**Swedish meatball mafia**" (Czech applicant), "**Miss Mafia**" (Australian applicant).

And it is natural to ask: why is "**Girl Mafia**" registrable as a trademark and "**Miss Mafia**" is not? When is and when isn't the word mafia "forbidden fruit" in the trademark law? According to recital 25 of the 15 March 2018 judgment, "where a sign is of a particularly shocking or offensive nature, it must be considered contrary to public order or to accepted principles of morality, whatever the goods and services for which it is registered". Why, then, in other cases and even after the EUIPO and TEU judgments commented on have marks containing the word "mafia" been granted registration? The TEU's argument that the legality of registration or invalidation decisions must be assessed solely on the basis of the EU Trade Marks Regulation and not on the basis of previous decision-making practice cannot be qualified as anything other than flimsy as long as signs containing the word "mafia" continue to exist and be registered as trademarks on the market.

We don't believe that these questions can be answered with "yes" or "no". What is clear, however, is that the Italian authorities failed to see the perverse effect of the cancellation of the registration of this mark and that the cancellation only increased the notoriety of the mark "**La mafia se sienta a la mesa**", even though it is no longer a registered trademark of the European Union.

We also believe that the measure of cancellation of the registration of this mark for the reason invoked by the Italian Republic (which does not belong only to the judges of the TEU, but also to the EUIPO "judges") also demonstrates how difficult it is to establish the content of public order and to operate with this concept, how uncertain is what the doctrine calls the "hard core" of the law. It shows how hard it is to dissociate public order from public decency and how subjective public order is and how true the statement that public order is what we want (say) it to be is.

If the EUIPO and TEU rulings cancelling the registration of the mark (which we will call hereafter and only "**La Mafia**" when it is not necessary to use the other word elements) is a victory for the Italian Republic, then it seems a bitter victory. We could even call it a victory as much as a defeat.

However, the prohibition of the sign "**La Mafia se sienta a la mesa**" was not only a formal but bitter victory for the Italian Republic (which, it must be admitted, proved to be caring towards its citizens, acting with good intentions) and for the Italians, but also a de facto victory for the Spanish trademark owners whose business not only did not suffer from the cancellation of the trademark, but, on the contrary, brought them a gain, its invalidation generated numerous topics of discussion, including: (i) can the use of an unregistered distinctive sign containing the word elements "**La Mafia se sienta a la mesa**" be prohibited in the Member States of the European Union; (ii) can such a sign become a well-known trademark and therefore eligible for protection as an unregistered trademark; (iii) can a word mark containing the sign "**La Mafia**" (the only one which can, however, be regarded as prohibited) be registered nationally in the Member States of the EU; (iv) can such a trademark be registered nationally or internationally in other non-EU countries? (v) is the sign registered by the EUIPO as a trademark of the European Union under no. 5510921 in 2007 and definitively invalidated in 2018 original and eligible for copyright protection? (vi) Can the use of this original copyright-protected creation be prohibited on the grounds that it is contrary to public order and copyright?

We add: if the TEU judgment of 15 March 2018 confirming the cancellation (by the EUIPO) of the trademark "**La Mafia**" for the sign's conflict with public order should also be considered as a binding ruling but also as relevant content for what we call "public order of the European Union" in the field of trademarks (with the consequence that the trademark "La Mafia" could not be registered nationally in the EU Member States either), then this means that either this content has been hastily and/or wrongly established, or that we are faced with a severe breach of public order in intellectual property law since the sign, formally outlawed, continues to be used successfully by the trademark proprietor as an unregistered trademark or other intellectual property right (trade name?, copyright?).

Faced with so many unanswered questions (and we are not even sure that we have identified them all) and to which we do not believe that we will find the answers most in keeping with the spirit of trademark law and

public order in intellectual property and in the face of so many uncertainties, it seems to us that more than 200 years later we are rewriting the legal dispute generated by the Shakespearean dilemma in "The Merchant of Venice" between the two (German-speaking) giants of the law: Joseph Kohler and Rudolf von Jhering, that of the primacy of morality over law or the primacy of law over morality. That we have proof again and that we have to admit that life and law (with all its hard core which is public order) are sometimes in conflict and that law must adapt to life, not life to law.

2. "Mafia": denotations and connotations or meanings, sub-meanings and uses

There are many reasons why the words "mob" and "mobster" seem magnetic, in that they simultaneously repel and attract, are considered hateful by some and innocent by others, hated by some and appreciated by others, outlawed by some, fully usable by others. And because you cannot be simultaneously an opponent and a friend of what we conventionally call the mafia, you cannot at the same time disapprove and approve of the mafia and its criminal activities, we state at the outset, and to prevent any misunderstanding, that nothing we write here should and cannot be construed as a position in favour of the mafia. We add here, however, that it is not only the mafia, in the sense of a criminal organization, and mafia-type membership and activities that are odious, but that states² that collaborate with the mafia and mafia members are even more odious when they hire them to commit criminal acts, regardless of the target and purpose, because in such cases, apart from the fact that the hiring state itself compromises its image and the power on behalf of which it works, by hiring them, it also bails out the mafia and mafia members, thus contributing to their credibility. And history knows such cases.

Denotatively (not quite correctly, but the explanation is provided by the dictionary), the word "mafia" is used with the meaning of criminal organization. The negative connotation of the same word is, for many people and especially for Italians, that of the embodiment of evil. Outside Italy, the denotation and primary connotation of the word "mafia" is diluted and no longer seems so serious, although it cannot be said that it has acquired anywhere a positive connotation (except, of course, the mafia) proving that the additional meaning of a word, especially the connotation, is negative, or positive (the word *haiduc*, for example, has a positive connotation for Romanians, although the original meaning is "highway robber" or "bandit"), is a cultural and emotional association added to a word, it is the "aura" that accompanies it, it is something in addition to the literal or explicit meaning of the word.

The connotation attributed to a word is the result of the experience of the group that uses it and this explains the difference in the attitude of Italians and Spaniards, in our case, towards the same word. And this is why we believe that we cannot condemn those who, having a different cultural and emotional experience, perceive one word or another differently and attribute different denotations and connotations to it, or are simply indifferent to the denotations and connotations attributed by others to the same words. The first judge to fall victim to the Mafia (Giovanni Falcone³, killed with his wife and three members of his guard on 23.05.1992, followed 53 days later by Judge Paolo Borsellino, killed with five members of his guard⁴, both born, raised and educated in Palermo, considered the birthplace of the Mafia) understood that the Mafia is a myth and organised crime, which has been given this generic name, a reality, and that the temptation to use it for various purposes is great. *"While there was a time when people were reluctant to say the word „Mafia”, said G. Falcone, nowadays people have gone so far in the opposite direction that it has become an overused term ... I am no longer willing to accept the habit of talking about the Mafia in descriptive and all-encompassing terms that make it possible to lump together phenomena that are indeed related to the field of organised crime but have little or nothing in common with the Mafia”.*

Regardless of the denotation and connotation attributed to it, the word "mafia" attracts with the power that the unknown, the mystery, the secret, the legend in which it is shrouded always have. From the very different positions that observers take, the word attracts, challenges, and calls for attention, and we believe that if a survey on the perception of this word were done, the surprises could be great. Of course, for some, many and especially for Italians, the mere mention or reading of the word "mafia" causes repulsion and resentment, for others, sympathy (restrained?) or even envy and admiration, to some a reaction of disapproval, to others appreciation, to some it arouses interest and the urge to know more about what we generically call "mafia",

² Leonardo Sciascia denounced the complicity between the Italian government and the mafia in his 1965 work, *L'onorevole* (The Honourable), but it is not the only book in which he did so.

³ He was the judge in the trial known as the "Maxi Trial" in which 360 of the 474 defendants on trial were convicted of serious crimes. The trial took place in 1986-1987. His murder was the "work" of the Cosa Nostra family.

⁴ His murder is due to the fact that, after the murder of his colleague and friend G. Falcone, he opposed the authorities' intention to conclude a pact with the Mafia, thus becoming a declared enemy of Cosa Nostra.

while to others it says nothing and we cannot know whether the latter are uneducated or relevant or irrelevant to a brand.

However, there are also people who, unaware of the original denotation and/or connotations of the word "mafia", have intuited its commercial potential in itself, its power to attract customers, its ability to distinguish products and services that have nothing illicit in them, who have understood that, when used lucratively and honestly, it can bring financial profits, significant gains without any other notable intellectual effort. It has contributed to this, of course, the fact that the mafia has also become a cultural phenomenon, with scientific works, novels, films, songs dedicated to it, through which the image of the mafia has acquired a note of honor and respect.

Human nature and the morals that tell each and every one of us what is right and what is wrong (moral or immoral) are constantly changing, but the change now is so radical and brutal, denying the values that seemed perennial to us (we are now living in a time of challenging a morality that for hundreds or even thousands of years we have considered to be in keeping with human nature and its spirit and imposing a new one, even though the adjective "new" is not proper to morality, whose fundamental values are clearly different from those of the old morality), that for very many people this change is impossible to accept. The new morality even overturns the laws to impose yesterday's immoral as moral today and even more, to put yesterday's morality against the wall, considered illicit today. It is obvious that we live in a time when disagreement with the new morality (its new core values) is a ... reprehensible immorality and that we live in a time when even the (sacred?) right to disagree is denied.

Intellectual property, the morality and/or legitimacy of which has been historically and still is today contested (and not only verbally and/or in writing), has often faced the issue of morality/immorality of some creations and/or creators and has a long history where works and their authors or those who read them and became followers of the authors have been "purified" by fire or buried alive⁵ under the accusation of moral violation. But even the history of protected intellectual property (which is a little over 300 years old) is full of conduct and judgments to the contrary, of creators who were severely condemned for the immorality of themselves or their works during their lifetime and who were acquitted and raised to the pedestal after death, when the new morality overcame the old morality and proved that moral and/or immoral is what we want it to be.

When it comes to trademarks, if we pay attention and judge objectively, we find that signs/words that in common parlance are synonymous with absolute evil are today successful trademarks. This is the case of the marks "**Rasputin**", "**Stalin(skaya)**" and its derivatives, "**Opium**", etc.

In contrast to these, a word which generically designates associations of persons constituted for the purpose of serious illicit actions, but which has not, however, done as much harm and caused as many victims as Rasputin, Stalin and opium, *i.e.*, "mafia", has been outlawed by the General Court of the Union, and in principle, this ruling takes effect in all EU Member States. Except that the invalidated mark containing this word refuses to accept its fate! The explanation for the double standard is, we believe, very simple: no one complained about "**Rasputin**" and "**Stalin(skaya)**", a country complained about the registration of the trademark "**La Mafia**": The Italian Republic. A country where the wounds inflicted by the mafia are many, deep and unhealable.

But what are the origins of the word and what was the evolution through which the initial denotation acquired the negative connotations of today?

3. The (honorable) origins of the word "mafia"

The word "mafia" is used in common parlance mainly to designate (denotatively) associations of persons formed for the purpose of committing crimes, often spread over the territories of several states, of acting to control completely or monopolise certain activities, including by physically eliminating members of competing groups in a territory. It is a generic word, with the value of a common noun, and its derivative, the word "mafia", has the value of an adjective or epithet, designating (i) belonging to a mafia-type criminal organization or (ii) behaviour outside the law or on the edge of the law, a way of being that is usually manifested by self-centeredness, lack of scruples, lack of empathy, arrogance, contempt for others, the law and morality. "*I am a mobster* - says a notorious character in Romania, but with a controversial image - *because I am a mobster by the way I behave. Yes! I park the car, I give a million bribe. I'll go to the waiter... I'll bribe two million! I don't talk to just anyone! I don't pay attention to just anyone (...). I am ... the millionaire, the hustler, the mobster, how can I make anyone pay attention, how can I not have my presence when I get out of a Rolls Royce? (...). The modern mobster doesn't shoot, he doesn't rake in money anymore, today's mobster makes money where nobody knows*

⁵ In 213 BC. the books of Confucius (551-479 BC.) were burned and 460 of its followers were buried alive by order of the first emperor of unified China (Qin Shi Huang, 246-210 BC.).

him and behaves like a gentleman", the expression used by this character became viral on the Internet in Romania⁶.

It is a behaviour that provokes some people to disapprove and/or (charmingly) ironic reactions⁷, while others admire it and wish to imitate it⁸ but we cannot dispute, we believe, that we are witnessing a use of the word "mafia" and its derivatives that no longer have the meanings that associate it with organised crime and that contextually, often, the use is made for the purpose of irony, pamphlet, mockery, the intention of making a direct link with what .

A criminal organization called "Mafia" does not exist in Italy either. But criminal syndicates are numerous (about 5,000 in the EU⁹ countries), but among them, some are distinguished by the fact that they are made up of people belonging to the same family (which is not necessarily biological), are conspiratorial, have an organization with well-established hierarchies, secret rituals and rules of loyalty, silence and succession at the top, with their own strictly observed "laws" with a long history (since the first half of the 19th century) and significant wealth.

Italy is the country where mafia-type organizations have the longest and richest history of serious criminal activities (corruption, extortion, drugs, arms, waste exploitation, loan-sharking, protection taxes, gambling) and crimes for the purpose of elimination, punishment or intimidation, including against judges, prosecutors, police officers or politicians who have been actively involved in fighting them. Italy, which also has the sad reputation of having "exported" the mafia to other countries, including the United States (which has become a sort of adopted country), is the country that has the most to suffer and to fight against mafia-type organizations. In this country, the turnover of mafia-type organizations is estimated at hundreds of billions of euros and the number of people involved in mafia business is around 200,000. All these are the reasons why an amendment to the Criminal Code by a law of 13 September 1982, in the chapter on offences against public order, introduced art. 416 bis, which incriminated "**mafia-type associations of three or more persons**", an association being considered a mafia-type association "**when its members make use of the intimidating force of the associative bond and the condition of submission and silence deriving from it in order to commit offences, to acquire directly or indirectly the management or, in any case, control economic activities, concessions, authorizations, contracts and public services or to make profits or unfair advantages for oneself or for others, or to prevent the free exercise of the vote or to obtain votes for oneself or for others in elections**"¹⁰. According to the provision at the end of the incriminating text: "The provisions of this article shall also apply to **Camorra, Ndrangheta and other associations, however locally called, including foreign ones, which, making use of the intimidating force of the associative bond, pursue aims corresponding to those of the mafia**", and this only confirms that the term "mafia" is a common noun used to designate associations constituted for the purpose of committing somewhat circumstantial crimes.

The strongest, most violent, richest and best-known organizations of this type in Italy are: 'Ndrangheta¹¹, Camorra, Cosa Nostra and Sacro Corona Unita (generically referred to as the 'Italian Mafia"), and in the US, (where it is generically referred to as the 'Sicilian Mafia") is made up of the Boanno, Colombo, Gambino, Genovese and Lucchese¹² families. But groups designated with the epithet "mafia" exist in all countries of Europe, Asia, America (North, Central and South) or Australia, some of them hundreds of years old (Yakuza in Japan, Triada in China, Cartels in Colombia, etc.). The Mafia is in Italy one of the most profitable and dangerous "businesses"¹³ and it is therefore not surprising that Italy and Italians are extremely sensitive to the way the word "mafia" and its derivatives are used.

The etymology of the word "mafia" is difficult to establish¹⁴, as there is no evidence on which to draw a firm conclusion about its origins. Traditionally Sicily is considered to be the birthplace of the word, but the true parents seem to be the Arabs. Sicily was the land of wars and successive occupations of several peoples, under Muslim rule and under the name of the Emirate of Sicily from 827-1091. On the Arab-occupied island (followed

⁶ S. Voicu, The Romanian Theory of Trickery: where the expression "That's what it means to be a mobster!" comes from and how it became famous. *The Romanian theory of trickery: where the expression "That's what it means to be a mobster!" comes from. and how it became famous* | adevarul.ro, accessed 29.04.2023.

⁷ Watch the "I'M A MOBSTER SONG" parody song posted at https://www.youtube.com/watch?v=0Sy_t8OcXSc.

⁸ Watch <https://www.youtube.com/channel/UCPUxqDQ7nz9ZxT6olZvGigg>.

⁹ Mafia organizations in Europe - DW - 06.12.2018 at <https://www.dw.com/ro/organiza%C5%A3iile-mafiate-din-europa/a-46607287>.

¹⁰ <https://www.google.com/search?q=codice+penale+italiano>.

¹¹ This most powerful Mafia-type organization controls alone 3% of Italy's GDP.

¹² Italian Mafia: look, first and last name – other 2023, at <https://rum.culturehatti.com/italyanskaya-mafiya-istoriya-poyavleniya-imena-i-familii-read-435923>.

¹³ How the Sicilian mafia earns most of the money. The business that goes beyond drug trafficking, at <https://playtech.ro/stiri/din-ce-castiga-mafia-siciliana-cei-mai-multi-bani-afacerea-care-depaseste-traficul-de-droguri-469180>.

¹⁴ Italian Mafia: look, first and last name – other 2023, at <https://rum.culturehatti.com/italyanskaya-mafiya-istoriya-poyavleniya-imena-i-familii-read-435923>.

by the French and Spanish) a Sicilian-Arabic language was spoken (which was also spoken in Malta and from which the Maltese language later developed), the Sicilian language of today retaining (like Spanish where 10% of the words are of Arabic origin) Arabic influences.

In a 17th century dictionary of the Sicilian language, the word "*mafioso*", thought to be the origin of the word "*mafia*", was used with several meanings: crass misery, dire poverty, bold, brave, handsome, self-confident, but also of impudent, arrogant peasant, unmannerly man, as well as that of thief, or robber. But "*mafioso*" has its origin in the Arabic word "marfudz" (مرفوض), which has the meaning of rejected, refused, unacceptable, poor stuck up, broke (from Turkish we have the word mofluz, in Turkish mulfuz). In Arabic, however, there are other words with a closer pronunciation that could be the origin of the Sicilian word "mafioso". *ma'āfir* (معافر), for example, was the name of the tribe that ruled Palermo under Arab rule, *mahyās* (مهياص) meaning aggressive or boastful, *mu'āfā* (معافي) meaning safety or protection or *mu'āfā* (معافي) meaning shelter, shady place. Another author Selwyn Raab, who also found the Arabic origins of the word, points out that until the 19th century the word "mafioso" did not designate a criminal but a "person who was suspected to have authority", and the original meaning would have been "*defender, protector against occupiers*", actions against successive occupiers of the island were carried out by families or groups of families (led by a small local "don" who was obliged to protect those on their domain¹⁵), who later, taking advantage of the chaos and violence on the island, began to demand protection money from the owners and then became what it is today¹⁶. Quoting the same S. Raab, another author argues that the origin of the word "mafia" would be in the expression "Ma Hias" which would mean "*a kind of protector of the weak against the silence of the strong*" the word would have originally meant, the protection of the weak and poor against the silence of the strong¹⁷.

Leonardo Sciascia¹⁸, however, identified a document from 1658 in which Maffua was the name of a witch from Sicily¹⁹.

In the second half of the 19th century in Sicily the word "*mafioso*" had no negative connotation, but neither a very clear denotation. It was used in common parlance to denote a beautifully knotted tie, a respectable (rounded) belly indicating prosperity, an elegant suit, an exquisite hat, a woman's beautiful eyes, an enterprising and courageous man, a woman full of femininity, a person of extraordinary qualities.

In 1863, at the request of a publicist, Gioacchino D'Angelo (who had spent half his life in Palermo prison, had a deep scar on his proud face and had become the leader of the prisoners) asked a young playwright (Gaspere Mosca, a former political dissident and revolutionary and fighter in Garibaldi's army) and an actor (Giuseppe Rizzotto) to write a play inspired by prison life, giving them a vocabulary of words (slang) used by the prisoners.

The play written by the two was initially entitled "La Vicaria di Palermo" (The Prison of Palermo) and later (at the suggestion of G. Mosca) "*I mafiusi di la vicaria di Palermo*". The play was a huge success, so that the idea was taken up by other authors who contributed to the spread of the "mafia" word and the negative connotations it acquired, although the original plot was that of poor people, pushed by both local and governmental Italian authorities and foreign occupiers and forced by circumstances to seek and take justice into their own hands in the belief that they were participating in a noble social protest.

The work of the two and of those who wrote later on the same theme in a poor Sicily with Sicilians for whom their own family was more important than the state and who were in constant conflict with the Italian government and the occupiers (some of them samavolnici) "*took the terms mafia and mafioso out of the cocoon of popular Sicilian culture, introducing them to the general public and giving them the sinister meaning they have today*".²⁰ And this new meaning quickly won out over the old, with a government report of 1865 on criminal activities in Sicily using the word "mafia" as a common noun to designate them, which then also crossed the island's natural borders.

A contemporary of the two writers, a little younger but more rational and fonder of Sicilians and their cultural traditions, Giuseppe Pitrè²¹, reacted vehemently accusing Mosca and Rizzotto of degenerating the word,

¹⁵ Don was a small local nobleman, keeper of the Sicilian traditions and unwritten laws who assumed the obligation of protection and it is believed that from this tradition of defense was born the custom of kissing the hand of a don.

¹⁶ Selwyn Raab is an American writer *Five families: The Rise, Decline and Rebirth of America's Most Powerful Mafia Empires, The Origins of the Mafia – HISTORY – Topics*, at <https://ro.royalmarinescadetsportsmouth.co.uk/origins-mafia>.

¹⁷ The Origins of the Mafia. It originated from an Arabic word and originally meant the protection of the weak and poor from foreign invasion, article available on *Origins of the Mafia. It originated from an Arabic word and originally meant the protection of the weak and poor against foreign invasions*, at <https://adevarul.ro/stiri-locale/botosani/originile-mafiei-a-pornit-de-la-un-cuvant-arab-si-1873155.html>.

¹⁸ Leonardo Sciascia (1921-1989), politician and writer (The Day of the Owl is his best-known novel), was a member of parliament and a connoisseur of the Mafia, about which he wrote many works.

¹⁹ Nike La Sorte, *Sicily and the Mafia*, https://www.americanmafia.com/Feature_Articles_264.html.

²⁰ Mike La Sorte, *How the word Mafia got its modern meaning*, article available on https://www.americanmafia.com/Feature_Articles_264.html.

²¹ Giuseppe Pitrè (1841-1916), Sicilian folklorist, physician, teacher and Italian senator from Sicily.

concluding deeply disappointed that **"the term was good and innocent before and they turned it into a bad one. In the past, mafia meant beauty, attractiveness, perfection, boldness, indulgence and excellence. Now its meaning has been so corrupted that any definition is impossible."**

There are authors who find a different origin and more honorable and older, they claim that as early as the 13th century Sicilians were fighting against the French occupation under the slogan **"Morte ai Francesi Indipendenza Anela"** ("Death to the French, independence we cry")²² and in 1882, an entity called the "Sicilian Wasps", with a Mafia-like organization (the first of its kind), was a secret organization that fought against both the oppressive Italian government and the occupying French under the slogan **Morte Alla Francia l'Italia Arde** (*Death to France, Italy cries out*). Slogans whose acronym is **MAFIA**. The legend, also with Sicilian origins, also says that the origin of the word is the cry of the mother of a girl raped by a French soldier **"Ma fia! Ma fia"**, which in Sicilian dialect would mean **"my daughter! my daughter!"**.

It is hard to say that without the literary writings that changed the meaning of the word "mafia" following its literary success and even more unfortunate use in the government report of 1865, its evolution, the connotations it acquired, its transformation in Italy into a synonym for the worst evil, would have been different. What is certain is that in the first decades of the last century this entity called "Mafia" (which like the state does not exist physically, it cannot be seen, heard, touched) through its various components (powerful families) controlled social life, had rules of organization, orders with the force of law and offered its members stronger protection than the state and even against the state. When the dictator Benito Mussolini visited Sicily in 1924, he was received as a guest and put under the protection of the Mafia, which angered him and made him declare war on the Mafia, the methods and means (of torture) used by the prefect Cesare Mori, to whom Mussolini gave a free hand to eliminate them, were more atrocious than those of the Mafiosi, The violent, bloody repression, sometimes without any proof²³ of guilt²⁴, led many Mafiosi to take refuge in the USA.

A mortal enemy of the Mafia, including the fact that in 1924 Benito Mussolini was received as a guest of the Mafia in Sicily and not as the head of state, cruel and merciless towards it, he put a surprising emphasis when he said that **"The Mafia is not a syndicate of people with crime as its aim. Rather, it is a mental illness, along with other good qualities and defects of the Sicilian people, a phenomenon of Sicilianism too, an anti-legal degeneration of a rebellion against the rule of law"**²⁵.

Family (sacred to Sicilians), the need to protect it against poverty and state authority and/or occupation, pride, courage and fierce repression by the authorities seem to be the root causes, the substratum of the emergence and roots of the mafia. He understood this Leonardo Sciascia, the novelist and politician, scholar and parliamentarian hopelessly in love with Sicily, author of numerous works on the Mafia who said that **"The only institution in the Sicilian consciousness that really matters is the family; it matters more as a contract or a dramatic legal bond than as a natural association based on affection. Family is the Sicilian state. The state is alien to them, just a de facto force-based entity."** . And he was complemented by Robert Kaplan when he said; **"Organized crime in Sicily is a manifestation of millennia of occupation which, with the exception of a few golden ages, has caused poverty, stifled the development of institutions and national consciousness, and demanded informal means of protection against the threat of even greater anarchy."**²⁶

Aware of the evolution and the power he had acquired over time, the same L. Sciascia would say in 1964, when the Mafia had a century of existence and many murders behind it but not yet those of Judges Falcone and Borsellini: **"Is it really possible to conceive the existence of a criminal organization so powerful that it could dominate not only half of Sicily, but the entire United States of America?"**²⁷

Obviously, and if all the meanings identified by various authors of the word "mafia" over the ages are true, the word was born on Sicilian soil but has Arab parents, was located in Sicily and evolved from a term with a heroic and positive meaning, to one that entered Sicilian culture with multiple meanings but without negative connotations, to become what it is today, a common noun used to designate associations of people (in so-called "families") whose purpose is to commit serious crimes, with a certain specificity, "families" that have their own rules of organization and management (including the succession of family leadership) rules/orders with force above the law, that control activities with enormous economic power (there are many countries that have a GDP

²² *The Origins of the Mafia. It originated from an Arabic word and originally meant the protection of the weak and poor against foreign invasions, at <https://adevarul.ro/stiri-locale/botosani/originile-mafiei-a-pornit-de-la-un-cuvant-arab-si-1873155.html>.*

²³ Under this new government there is a moral certainty of your guilt, replied the famous prefect Cesare Mori to a no less famous mafia boss Don Vito, suspected of having committed 69 murders and who confessed to being the head of the Sicilian mafia after two hours of cruel torture.

²⁴ Mori was a scourge of God here; he swept away everything and everyone, guilty and innocent, honest and dishonest, according to his whims and his spies." (L. Sciascia, 1964)

²⁵ *Apud* Mike La Sorte, *op. cit.*

²⁶ *Ibidem.*

²⁷ *Ibidem.*

below that of the turnover of the largest mafia families), but (in Italy in particular) also control of political institutions and public authority, and that have a long history of crime, violence and serious offences behind them.

We should also note here that the size of the Italian mafia and its actions are unparalleled in the world. That in Italy judges (together with their family members) who have investigated and convicted mafia members (Giovanni Falcone and his family and Paolo Borsellino together with his five members of his guard), policemen, journalists, politicians have been assassinated, it is natural that Italians and non-Italians view the mafia differently, because Italians live with the mafia alongside and under the threat of the mafia, while the rest of Europeans feel and see it differently. In Italy, it is not only the economy that is being devoured by the mafia, but also social consensus and civil society, and implicitly politics, are affected, with Sonia Alfano complaining, for example, that German colleagues in the European Union's Anti-Mafia Commission, "*have tried to find obstacles to the confiscation of funds and assets because it is important for them to defend the rights of suspects*". The same Sonia Alfano said in a 2013 Euronews interview that "Unfortunately, the mafia is already in the control room when it comes to Europe. Unfortunately, the mafia has advanced knowledge of what is happening, where it is happening and who is making the decisions. They have relations with people in all the EU institutions, the European Commission, the Parliament, the Council, etc. When I talk about the mafia, I am not talking about the military wing of the mafia, the people who carry out assassinations, robberies, extortions. I'm talking about the white-collar mafia, who work in the institutions, in the public administration, in all the institutional organizations that deal with the EU all the time and who know what strings to pull."²⁸

Roberto Saviano²⁹, Italian journalist and writer, has warned of the power of the mafia to infiltrate any society, even beyond Italy's borders. "Today," says Saviani, "the criminal organization is primarily affecting Europe. The German economy and even the English or Spanish economies, for example, are deeply infiltrated by the mafia, without the governments of these countries informing their citizens. The Mafia is currently a mortal danger for the future of our continent"³⁰.

Can the word "mafia" regain any of its former positive connotations? It's hard to believe that for the Italians who put the word "mafia" on the pillar of infamy, this could still happen. But it is even harder to believe that the use of the word "mafia" in any context other than to designate associations of people formed to commit crimes could be stopped, the temptation of the forbidden fruit being all the greater the more controversial the fruit, seeming to prove the proverb that anything that is good is either immoral, illegal or fattening.

However, we find it interesting to mention here that in Romanian a word whose original meaning (denotation) was that of robber has acquired in a historical context repudiated today (during the communist period) a positive connotation, that of a man who takes from the rich to give to the poor. Obviously, it's the word "outlaw" which is also trademarked.

However, it must be reaffirmed that **a criminal organization or an association of criminal organizations (of families as they are most often called) with the name Mafia did not exist even when several families (for example, the five mafia families in the USA) had, for a time, a single leadership (a capo di tutti capi), the mafia families often being in conflict with each other for supremacy and territories.** And yet, the word is also often given the value of a proper noun when used to designate entities (as a whole) that carry out mafia-type activities.

But the word "**mafia**" has other meanings and uses, including as a proper name or in the composition of proper names outside Italy.

4. Paradise called "Mafia Island"

An island (413 km² with a population of 40,000) on the west coast of the Indian Ocean and belonging to Tanzania, in Swahili (the majority of the 100 languages spoken in the country) is called "**Kisiwa cha Mafia**", meaning **Mafia Island**, the original meaning being a healthy place or archipelago.

Mafia Island, which is a popular tourist destination, is considered a treasure of Tanzania and is protected as a nature reserve.

²⁸ Frontline in fight against mafia goes EU-wide, at <https://www.euronews.com/2013/10/23/the-battle-front-in-the-fight-against-the-mafia-goes-eu-wide#vuukle-comments-243326>.

²⁹ Roberto Saviano (b. 1979) is a writer and journalist. In his book Gomorrah, published in 2006, he describes the activities of the criminal organization Camorra (the book's title is a play on words), which sold over 4 million copies in its first two years alone. Threatened by the Camorra, he has been under police protection since October 2006.

³⁰ Frontline in fight against mafia goes EU-wide, at <https://www.euronews.com/2013/10/23/the-battle-front-in-the-fight-against-the-mafia-goes-eu-wide#vuukle-comments-243326>.

5. Mafia in the world of cinematic art

Dealing with Mafia activities in art films is common in the world of cinema (dominated of course by the American one) and, as a rule, films with such a theme (and there are many such films that have become real propaganda vectors) are popular with the public and have artistic value, so that they enjoy success and not infrequently important awards. Among the best known and most awarded films, the top three (in our top three) are *The Godfather*, *Goofellas* and *Scarface*, while *La piovra*, Italy's most famous TV series, is also considered the most realistic film about the activities of organized crime designated as the "Italian mafia". People learned more about the mafia from realistic films and appreciated the artistic achievements, the films helped to affirm the denotation and connotation of the word "mafia". But has the filmography it is about done any good or harm to the mafia?

On 1 January 2018 (when the UK was still with one foot, in the EU), the "*McMafia*" series was released in London, and the fact that it was a film about the so-called "*Russian mafia*" (which some authors claim is older than the "*Italian mafia*") makes the use of the word no less pernicious than the use of the same word as part (verb element) of a trademark. "*Mc*", a synonym of the word *Mac*, means "son" in Welsh and is a commonly used prefix to Scottish and Irish names, while in Italian the letters "*MC*" are used to designate "*master of ceremonies*". This means that the title of the British film could be translated as either "*Son of the Mafia*" or "*Mafia Master of Ceremonies*", and this would mean giving the word "Mafia" a meaning as a proper name, which we do not believe is possible, **since a criminal association bearing this title did not and does not exist**. But we do not believe that the makers of "*McMafia*" would have chosen this title, which is admittedly original, for any other reason than its appeal, its (intended) impact on the audience.

The latest Hollywood-ian film with a "Mafia" theme is *Mafia Mamma*, shot mostly in Rome in 2021-2022, starring Italian (Monica Bellucci among them), Australian (Toni Collette in the lead role) and American actors, and released in cinemas on 14.04.2023. And the fact that the film is an action-comedy with extreme moments of comic and/or violent scenes, at the centre of which is a woman distraught by the happenings of her life (cheating wife, mother stressed by her son's departure for university, assaulted at work by a sexist boss) in the US appointed by her grandfather (a former capo and of whose existence during his lifetime she was unaware) the head of the most important mafia family in Calabria, does not, in our opinion, make him any less innocent, according to the TUE standards in the judgment that generated our comments. And we also note here that when actress Toni Collette, cast in the lead role, read the script, she exclaimed: "*Oh, yeah! I have to do this!*", and after the film was finished he said: "*I've never had so much fun in my life (...). And it was not only the best job of my life – one of the best experiences of my personal life. It was huge for me.*"

6. Mafia in music

In 1993 the band *Black Underground*, later called *B.U.G.*, was founded in Romania. *Mafia* (short for "*Bucharest Underground Mafia*"), their 1995 debut album was actually called "Mafia". Later the group also set up a production house which they called "*B.U.G. Mafia presents CASA*" and we do not believe that the choice of the word "mafia" in the distinctive sign under which it operates would not be the result of a deliberate connection with the famous mafia and made in consideration of the advantages pursued by the members of the group from the use of this sign.

In 2007, the same year in which the EUIPO application for the EU trademark "*La Mafia se sienta a la mesa*" was filed, a band called "*Swedish House Mafia*" was founded in Sweden and still exists today, and its name was registered as a trademark of the European Union in 2010 (the applicant and owner of the trademark being a UK company – SSA Merchandise Ltd). With a winding path, the Swedish band has been and still is a successful one, which made its members declare in 2012: "*we've exceeded our dreams and come very, very far*". A year in which, during a concert in Dublin, there were events described by the authorities as "*unacceptable, very serious, stabbings and deaths probably caused by drug use*", and the press commented that always the kind of "*dance music involved drugs (...). Today's generation tends to drink alcohol – they drink indiscriminately. And when you mix a hard drug with, large amounts of alcohol, it's time (for the rest of us) to fight back.*" And yes, we don't believe there is any connection between the band name and the events that then took place, nor do we believe that if any other band name had been used, the sad events would not have taken place. The same British company (SSA Merchandise Ltd) has registered the word mark „*House Mafia*".

7. Mafia and electronic games

In 1986 (the year the Italian TV series "La piovra" began airing in Russia), Russian Dimitri Davidov of Moscow

State University "invented" the game he called "Mafia" for teaching and research purposes³¹, which spread rapidly outside schools and beyond Russia's borders (in some European countries it is known as "Palermo City"), including the United States. Essentially, the game is about a battle between the murderous bad guys (mafia) who hid by posing as honest and the good guys who had to prove their innocence and identify and eliminate the bad guys³². In 1997, an esteemed author of electronic platform games, Andrew Plotkin (Zarf), arguing that the mafia had less cultural resonance and that the idea of a hidden enemy who during the day seems normal is more appropriate than the werewolf, replaced the villains and the game spread as Werewolf. Subsequently, the game was the starting point for lessons and manuals for teaching body language reading, non-verbal signs and visual psychodiagnosis and for developing other games.

In 2002 the first game (known as *Mafia: The City of Lost Heaven*) for electronic platforms in the successful series called Mafia, action/adventure games with protagonists who get involved in one way or another in mafia activities, either for access and promotion, for punishment.

The Mafia II series (released in 2010), also an action game featuring a young Sicilian-American mobster and war veteran caught in a fight between mafia families in a random town and in which the word fuck is used more than 200 times, well received by the public and critics like the previous series, but it prompted Sonia Alfano (president of the Italian Association of Mafia Victims' Families and president of the European Anti-Mafia Commission, whose father, a teacher and journalist in Sicily, was killed by the Mafia in 1993) to call for the film to be banned. The response from the game's developers was that the depiction of the mafia in the game they created was no different from that in *The Godfather*, and not only did the game continue unabated, but in 2016 the Mafia III series was released, and in 2020 the so-called "definitive" editions of Mafia II and Mafia III were released.

8. "Mafia" in honest business

In 2013, young Indian Neha Sethi (educated and experienced in banking but passionate about cooking for friends and family) opened a pastry and confectionery shop in Mumbai (Bombay) under the name "**Sweetish House Mafia**", a business which, thanks to smart and effective promotion and advertising and the quality of the products, enjoyed rapid success which led her to launch the franchise network of the same name³³ in 2014, with the declared ambition to expand across India. The success was so rapid that, by her own admission, it was astonishing even for the young entrepreneur, who also added that the name given to her business attracted consumers³⁴. And we note that Mumbai, India's largest city and financial capital, is home to many mafia-type organizations, the common term for their activities being *daaku* in Hindi and *dacoity* in the anglicised version. Without following the organizational model of the Italian mafia, Indian criminal syndicates are just as dangerous and violent. And it is obvious that Neha Sethi (who, by the way, did her university studies in the US), did not stop at the word "mafia" to designate her business which is proving to be successful, without making a connection with the real mafia and the power of attraction of this word.

9. The word/sign "mafia" in the composition of the mark *La Mafia se sienta a la mesa*

In 2000, **La Mafia Franchises S.L.** was founded in Spain, with the word "mafia" becoming part of the company's trade name.

On 30.11.2006 another Spanish company (established in 2001 and with last accounts filed in 2012)³⁵ "**La Honorable Hermandad S.L. (Honourable Brotherhood)**", whose business was the trade in food, beverages, tobacco, car repairs and the **exploitation of trademarks**, filed with the EUIPO for registration as a trademark of the European Union in classes 25, 35 and 43, a sign consisting of a square with a black background in the centre of which is a red rose and the words *La Mafia* (in capital letters, in white), and in the lower part of the square, in small font and colour, the words "se sienta a la mesa", it being evident that the dominant elements are the black colour of the square, the words "La Mafia" and the red rose.

³¹ Spelet Maffias historia, anonymous, posted on>> *Epic Mafia* – *Historia*, at https://www17.goteborg.se/ubf/polhem/webb/elevarbeten/webbdesign/2011_3/wd007/historia.html.

³² Dimma Davidoff: ORIGINAL MAFIA RULES at <https://www.bing.com/search?pglt=43&q=Dimma+Davidoff%3A+REGULILE+ORIGINALE+ALE+MAFIEI>.

³³ *Sweetish House Mafia Franchise – Find Revenue Sharing, Support and more (franchisebyte.com)*.

³⁵ *LA HONORABLE HERMANDAD SL – Company report*, at <https://www.empresia.es/empresa/la-honorable-hermandad/>.



The sign was registered by the EUIPO (without observations and/or objections) as a trademark under no. 5510921, and was published in the Community Trade Marks Bulletin no. 24/2007, and subsequently transferred to "La Mafia Franchises S.L."

The first "La Mafia" restaurant opened in Spain in 2001. In 2014, the number of restaurants operating in the franchise network under this name was 34. After the cancellation of the trademark registration, the network continued to operate and exist under the plain trademark: „*La Mafia se sienta a la mesa*”.

In 2022 (four years after the cancellation of the trademark registration), the number of restaurants was 50 and the owners announced that they were about to expand into Portugal with a **master franchise** (a franchise in which the master franchisee becomes a mini-franchisor himself), informing those interested about the conditions under which those interested can join their franchise network: (a) minimum investment: from €350,000, depending on the condition and size of the premises; (b) entrance fee: € 28,000 + VAT; (c) 55% royalty on sales / 4% multi-franchise; (d) minimum population: 50,000 inhabitants and (e) the contract term: 10 years, proving that the business is successful.

10. Public positioning of the "La Mafia" brand. Who is the relevant public for EU trademarks?

We shall see below that in the view of the General Court of the European Union, the relevant public on the territory of the Union is "by definition on the territory of a Member State" and that "signs perceived to be contrary to public order or morality are not the same in all Member States, in particular for linguistic, historical, social or cultural reasons" (para. 25 of the judgment of 15.03.2018). In other words, if a trademark is contrary to public order in an EU country, it must be cancelled, even if the public in other countries does not perceive it as such (contrary to public order and/or morality), and this is logical in view of the principle of the unitary trademark regime of the European Union.

From an article published on 22.02.2014 which we consider relevant to our commentary (but there are many such articles in Italy) and which belongs to journalist Nick Squires³⁶ we learn that Italians were dismayed, scandalized and outraged by the use in Spanish restaurants of the brand "La Mafia" and images from mafia movies, by the existence of a club ("Mafia Fidelity Club") of customers of these restaurants (estimated to be then 40.000 people) and the use of the word "mafia" as a marketing vector, given the high number of people killed by organised crime groups and other serious crimes committed by them, and asked Spaniards to imagine what their reaction would be to the opening in Italy of restaurants dedicated to ETA terrorists (which still existed at that time as a terrorist and separatist organization in Spain). The same article recalled that Senator Giuseppe Lumia, member of the Anti-Mafia Commission of the Italian Parliament, said that "the use of the word "mafia" in a trademark is scandalous and unacceptable, extremely offensive to the national image of Italy and to all those who have paid with their lives in the fight against mafia clans. The reaction of the Spanish brand owners was a pale one, in that they had no intention of offending the Italians, there are no violent images in their restaurants and that their restaurant chain provided jobs for 400 full-time employees.

In the present case, the General Court of the European Union took into account not only what in trademark law we call "the relevant public"

11. Legal dispute on the use in brands of words contrary to public order or good morals

On 23 July 2015, the Italian Republic, alleging a breach of public order and morality [(art. 7 para. 1(f) of Regulation (EC) no. 207/2009 now art. 7(1)(f) of Regulation (EU) no. 1001 of 14.06.2017 on the European Union trademark³⁷] applied for the cancellation of the trademark registration for all the goods and services for which the mark had been registered.

The Trade Mark Cancellation Division of the EUIPO, in its decision of 3 March 2016, granted the application for cancellation of the mark and in so deciding found that the semantic content of the mark in dispute **is deeply**

³⁶ *Italians take a stand with "Mafia" branding in Spanish restaurants, at <https://www.csmonitor.com/World/Europe/2014/0222/Italians-take-umbrage-with-Mafia-branding-in-Spanish-restaurants>.*

³⁷ Article 7, Absolute grounds for refusal (1) (1) The registration of the following shall be refused: (...) (f) marks which are contrary to public order or morality (...). The corresponding texts of the two Regulations (37 and 42 respectively) governing the examination of absolute grounds for refusal are also almost identical in content.

offensive to any person in Europe with a normal level of sensitivity and tolerance. The message of the mark, the EUIPO found, is offensive and downplays the threat of a criminal organization such as La Mafia, and the sign as such diminishes the negative meaning that La Mafia has (*i.e.*, trivialises it), thus being offensive not only to the victims of La Mafia, but also to those who know the violent nature of this organization. The EUIPO Board of Appeal, in its decision of 27.10.2017, upheld the annulment decision adding that the EUIPO must take a strict stance against violations of basic principles and values of European society and apply the general principle that any mark which supports or benefits an organised criminal group should be rejected as contrary to public order. It also pointed out that the trademark clearly promotes in large letters the name of the mafia criminal organization, which the Italian government is fighting through specific laws and enforcement measures. But more than that, the addition of the word "sits at the table" distorts the gravity that La Mafia evokes by conveying a message of cordiality and banality, turning it into a simple gathering around a table. The EUIPO Board of Appeal also argued that the measure of invalidation could not be influenced by the fact that the word element "**mafia**" **was often used in literature and cinema, nor by the fact that the EUIPO had registered other European Union trademarks containing the same element, namely "mafia", which were not such as to influence the decision to invalidate the mark.**

La Mafia Franchises SL brought an action before the General Court of the European Union against the decision of the EUIPO Board of Appeal of 3 March 2016, seeking annulment of the decision of the EUIPO Board of Appeal and maintenance of the registration of Community trademark no. 5510921. In essence, the applicant argued:

(a) That the cancellation of the registration infringes art. 59(1) letter (a) of Regulation 2017/1001 (in the previous regulation, art. 52(1) lit. (a) which provides that the registration shall be cancelled if it infringes art. 7(1) letter (f) of the same Regulation;

(b) That neither the organization known as the Mafia nor its members are included in the list of terrorist persons and groups annexed to Council Common Position 2001/931/PESC of 27.12.2001 on the application of specific measures to combat terrorism referred to in the EUIPO Guidelines on the examination with a view to illustrating the prohibition of registration of European Union trademarks which are contrary to public order in accordance with art. 7(1)(f) of Regulation 207/2009;

(c) that a European Union trademark must be analysed as a whole or the reference to the verbal element "mafia" alone is not sufficient to conclude that it is perceived by the average consumer as promoting or supporting this criminal organization, the other elements of the mark suggesting rather that it is perceived as a form of parody or reference to the Godfather movies

(d) that the goods and services covered by the contested mark are not "communicating" services, or services which are intended to be used to convey a message to others, and are not registered for the purpose of insulting, shocking or harassing. On the contrary, the general public understands that the contested mark was registered **to designate a chain of restaurants**, the concept of which does not refer to a criminal organization, but to the films in the Godfather series and, in particular, to the values of family and corporatism which those films portray;

(e) a large number of European Union trademarks and Italian trademarks containing the word "mafia" have been lawfully registered and are effective, and cites in that regard two decisions of the EUIPO Board of Appeal which, in its view, are analogous to the present case, namely the decision of 13.01.2012 in Case R 1224/2011 4 concerning the application for registration of the European Union trademark **MAFIA II** and the decision of 7 May 2015 in Case R 2822/2014 5 concerning the application for registration of the European Union trademark **CONTRA BANDO**.

By judgment of 15 March 2018³⁸ the General Court of the European Union dismissed the application of the applicant **La Mafia Franchises SL**, confirming the decisions of the Cancellation Division and the Board of Appeal of the EUIPO and reinforcing their arguments and concluding that "*the mark in question, taken as a whole, evokes a criminal organization, gives a positive overall image of that organization and therefore trivialises the serious attacks which such an organization commits against the fundamental values of that Union (...). The mark in question is therefore shocking or offensive not only to the victims of this criminal organization and their families, but also to anyone in the Union who encounters this mark and who has average thresholds of sensitivity and tolerance.*"

In the view of the TEU, for the purposes of examining the ground for refusal in art. 7(1)(f) of Regulation no. 207/2009, the relevant public cannot be restricted to the public directly targeted by the goods and services in respect of which registration of the trademark is sought, taking into account the fact that the signs covered by that ground for refusal will not only shock the public targeted by the goods and services covered by the sign, but

³⁸ Recital 47 of the judgment of the TEU of 15.03.2018 in Case T- 1/17.

also other persons who, without being interested in those goods and services, will incidentally encounter that sign in their daily lives.

The General Court concluded that "the relevant public in the territory of the Union is by definition in the territory of a Member State, and the signs likely to be perceived as contrary to public order or morality are not the same in all Member States, in particular for linguistic, historical reasons, social or cultural reasons" so that in applying the absolute ground for refusal of registration based on breach of public order, "account must be taken both of circumstances common to all the Member States of the Union and of circumstances specific to individual Member States which may influence the perception of the relevant public in those States" (recitals 28 and 29).

The EU General Court stated (in para. 25 of the Judgment) that the absolute ground for refusal of registration, *i.e.*, cancellation of the registration of a trademark (in this case, the trademark "**La Mafia**") **on grounds of infringement of public order or accepted principles of morality** by the sign/trademark applied for and/or registered, is based **on the public interest**, *i.e.*, that the registration or use "in the territory of the Union" of signs contrary to public order or accepted principles of morality **is contrary to the public interest**.

But both the **notions of "public interest", "public order and morality" are merely evoked, presumably considering that they are well known and do not need to be explained** (as the CJEU did in its judgment of 27 February 2020 in Case C-240/18P for the word sign "Fack Ju Göhte" which was held not to be contrary to morality as a trademark);

12. General interest, public order and good morals in trademark law. Impediments in the registration and/or validation/invalidation of trademarks

In definitively annulling the trade mark "*La Mafia se sienta a la mesa*" (*The Mafia sits at the table*)³⁹ the EU Court stated (in para. 25 of the Judgment) that the absolute ground for refusal of registration, *i.e.*, for the annulment of the registration of a trade mark (in this case, the trade mark "**La Mafia**"), was based on, on the ground that the sign/trademark applied for and/or registered infringes public order or accepted principles of morality **is in the public interest**, namely that the registration or use "in the territory of the Union" of signs contrary to public order or accepted principles of morality **is contrary to the public interest**. But "**public interest**", "**public order and morality**" **are merely evoked, presumably considering that they are well known and do not need to be explained** (as the CJEU did in its judgment of 27.02.2020 in Case C-240/18P for the word sign "Fack Ju Göhte" which was held not to be contrary to morality as a trade mark).

Public order and good morals are traditional means of defending and controlling the observance and realization of "public/general interests". The two notions (public order and morality) are, in our opinion, complementary notions, the relationship between them being from part to whole, because everything that represents the field of public order also belongs (should belong!) to the field of morality, the reciprocity not being entirely valid, because the field of "morality" is much broader than that of "public order", and it is inconceivable that public order contradicts morality. The link between the two concepts is long-standing and very close, and they are not only factually but also legally inseparable. The public/general interest is what law, morality and public order defend and serve.

The notions of "**public/general interest**" and "**public order**" seem to be, like those of „**fairness**" and "**justice**": unique and universal, so it is natural that they have no plural. Unlike the previous ones, the notion of "**good morals**" induces by its very name the idea of plural, but in this case the plural is necessary to underline the fact that we are talking about several unwritten rules that must be respected in all circumstances and that could be limited, in reality, to only one: honesty in relation to yourself and others. But if by "**good morals**" we mean a set of rules of proper conduct (and to which laws sometimes refer to emphasize the imperative character of certain rules and even the illicit character of certain acts or deeds), then "**good morals**" is confused with **morality itself**, because morality is also defined as the set of rules of conduct of people towards each other and towards the community in which they live, the violation of which is sometimes sanctioned by law.

In law, the notions of "public/general interest", "public morals" and "public order" have, according to most authors, not only the power to limit individual freedoms and rights (as in the case of an absolute refusal of registration for the express and limited reasons laid down by law), but also the quality of making possible the rectification of mistakes (as in the case of the cancellation of the registration of a trade mark on grounds of violation of public order and/or public morals). However, they also have a malevolent quality, that of justifying and/or motivating arbitrary measures and/or decisions by their mere invocation. And when they are not observed, or correctly understood and applied, or when they are abused in their name, they generate not only for those directly harmed, but also for the community as a whole, discontent and critical attitudes that can take

³⁹ TEU, Judgment of 15.02.2018 in Case T-1/17.

violent forms.

Used in legal life (but also in political life and administration), they take on an aura of majesty, gravity, almost divine and undeniable. They fascinate by their mere utterance, and recourse to the argument of public order or morality makes it impossible to challenge the argument in any other way than to show that the argument does not in fact concern public order or, as the case may be, morality, which is tantamount to establishing their correct content. But how can one effectively combat arguments based on public order or good morals when no one has been able to define them in a way that would be considered satisfactory and generally accepted, no one has been able to say what the rules are according to which the content of public order and good morals is determined and why these notions that should be clear and precise are so vague, so changeable? Their intangibility, to the extent correctly applied, is, however, justified in principle: if they are immaterial and essential, and if they have greater power than the written rules of law (which they remove from application if they are contrary to them), and if they enjoy such a high regard, to deny them is indeed impossible.

Metaphorically likened in doctrine to containers or frames to be filled, their contents turn out to be objectively case-by-case and qualified according to space and time, the context in which they are invoked to be applied, the subject matter and field concerned, and in which the contents have to be determined on a case-by-case basis, and this is fully valid also in trademark law.

13. What is the public/general interest in trade mark law and how does it relate to public order? Irrelevance of the "relevant public" in assessing whether a mark is contrary to public order

The notions of "public interest", "general interest" and "public order", frequently used in law, are difficult (according to most authors, even impossible) to separate and especially to define, from this point of view they resemble that of freedom (as a state of fact and of law) that everyone invokes, knows, desires and wants to take refuge in, but knowing what it is only until they have to define and explain it.

It is no less true, however, that in legal life, definitions, however desirable and useful they may be in practice, can also have perverse effects, consequences that the legislator would not have intended and did not foresee. And since "public/general interest" and "public order" are random and their content differs spatially and changes over time, defining them in anything other than a very general way could even be contrary to the practical needs of application. We believe, moreover, that the public interest and the general interest and public order are notions that the very lack of definitions and of a predetermined and unchanging content and their ambiguity make them what they are and make them so valuable in and for legal life. This makes the task of the interpreter, of the judge, extremely difficult and transforms him *de facto* into a real legislator when he has the task of identifying and applying them to concrete cases.

The general interest is at the heart of societies and laws, it is the cornerstone of good political and administrative decisions and good laws. It is in everyone's interest, it is always there and it should be achievable outside of any coercive measures.

The general interest justifies constitutional, administrative and civil rights and must be taken into account in all circumstances, while the **public interest is that part of the general interest which can be achieved/satisfied by the intervention of public force**, but a categorical separation of the two is neither justified nor possible. A French author, for example, in a work devoted to the general interest in various systems of law, points out that *"the general interest is seen as a third type (our note - of interest) made up of the fusion, and not simply the aggregation, of private interests and public interests, and resulting in something that goes beyond both and satisfies both without affecting them, but enhancing each other"*⁴⁰.

Therefore, although we consider them only partially identical, **we will use the expression "public/general interest" for the purposes of this article.**

The public/general interest is determined on a case-by-case basis by judges, legislators or other authorities, and its determination always involves a value judgment whose quality depends on the degree of responsibility, the level of understanding, the information, knowledge and experience of the person called upon to make it, and his or her wisdom and good faith. And if this is the case, it means that the interpreter has exorbitant power, but also that there is no definitive "public/general interest" (which also applies to "public order" and "good morals", as we shall see below) and that we can only speak of a "public/general interest" in an aspirational sense.

General well-being, living in a state of material and spiritual comfort, the benefits generated for society and the degree of satisfaction of the community with the authority and its decisions, the level of common good are the units of measurement of public/general interest. The interest to be taken into account when a decision has to be taken cannot be limited to that of the moment, because from a more distant perspective, it might even be

⁴⁰ G.J. Guglielmi, *L'intérêt général dans les pays de common law et de droit civil*, Éditions Panthéon-Assas, 2017, p. 6.

contrary to the real interest. Of public/general interest are those actions that pursue the good of the community, but it cannot be simplified and stated that when aiming to identify and establish public/general interest, private/private interest could be ignored.

And since the "public/general interest" is (like it or not) also emotional, although it seems to us as static, important and unquestionable, and in fact it is always different in space and time to serve the interests of the user, indeed, defining, understanding and identifying or determining it is not an easy task. And we believe that in the case of "*La Mafra*" this is confirmed, and among the questions that arise is whether it has been correctly identified.

It is in **the general/public interest for trade marks** to have registered signs with exclusive right of use which serve to identify the commercial origin of goods and/or services, to differentiate goods and/or services of the same kind of competitors in a market, to provide sufficient information about a product or service so that the consumer is correctly and as fully informed as possible about the commercial origin and qualities of a product or service in a competitive market and can make a choice.

But although the law states that any sign capable of distinguishing goods/services of the same kind and which is capable of representation in a register for the purpose of making it possible to determine the object of protection may be registered, the same law states **that the fact that the sign is contrary to public order and/or morality is an absolute ground for refusing registration or, where appropriate, for declaring it invalid**. In other words, public order limits the right to register distinctive and representable signs as trade marks in the registers if they are contrary to public order and morality and does so in the (general) interest of consumers.

In some cases, the EU General Court has held that the general interest underlying the ground for refusing registration is to avoid the registration of signs which would be detrimental to public order and morality when used in the territory of the Union (para. 25 of the judgment of 15.03.2018 in Case T-1/17), which is a reversal of roles, because it is the function and role of public order to protect the general interest, not the other way round. It is not the public interest that is the reason for absolute refusal of registration, but the sign's conflict with public order that is such a reason. Public order serves the general interest, not the other way around.

At this point of the analysis of the general/public interest, it seems necessary to stop, but without being able to do so as much as would be worthwhile and appropriate given its importance⁴¹ to define and/or identify the "**relevant public**" in trademark law. In fact, the relevant public consists of the group of persons interested in the goods/services bearing the trade marks. Such a public manifests itself as such in trade mark law when it participates in the evaluation in a survey. Otherwise, it is a virtual character in whose "skin" the judge puts himself to answer the question of the relevant audience. Advocate General Paolo Mengozzi considers that this is the average consumer⁴², *i.e.*, we add, the person on offer (the recipient of the goods) and placed in the situation of having to choose between several goods of the same kind and who is reasonably educated and sufficiently well informed to be able to formulate a relevant opinion on the mark in connection with the product, of course, which evaluates the mark in a correct, complete, convincing manner. But the judge himself will only rarely (or rather, never) be such a character, and to ask him to judge in this way is to ask him to deduce himself, and we do not think he will ever be able to do so, because that would mean behaving abnormally. That is why we believe that the judge must be helped (it is the role of the parties and the lawyers) with sufficient evidence, explanations, correct and complete conclusions, in order to put him only in a position to judge, and not to behave like such a consumer himself. However, the judge must not assume the role of the consumer alone, nor can the judge simply declare that the relevant public must evaluate the sign/brand as the judge sees fit.

It is no less true that in order to identify the relevant public, it is necessary to take into account the goods and/or services bearing the marks, their nature, the potential consumers, the territory in which the goods are marketed, the degree of personal training and that required for a correct evaluation. For example, a physician recommending a product is more educated and knowledgeable than a patient, so the physician's assessment will be more relevant than the patient's, but the judge could not substitute himself for the doctor and decide in such a specialised field). Even in the case of marks such as those for restaurants, opera titles, business management, etc., the judge will not be able to evaluate one mark or another because it will be impossible for him to convert to an average consumer.

On the other hand, it is not and cannot be only the consumers of the product/service identified by such a

⁴¹ For a broader discussion see A. Livădariu, *Interpretation of the provisions of Article 7 para. (1)(b) and (c) of Regulation (EU) 2017/1001 on the European Union trade mark. Lack of distinctiveness. Descriptiveness*, article available at <https://www.juridice.ro>, *Interpretation of the provisions of Article 7 para. (1)(b) and (c) of Regulation (EU) 2017/1001 on the European Union trade mark. Lack of distinctiveness. Descriptiveness*, at <https://www.juridice.ro/671871/interpretarea-dispozitiilor-articolului-7-alin-1-lit-b-si-c-din-regulamentul-ue-2017-1001-privind-marca-uniunii-europene-lipsa-de-distinctivitate-descriptivitatea.html>.

⁴² The judgment of the TEU of 12.03.2020 in Cases T-352/19 and T-353/19. Gamma-A/EUIPO – Zivju pārstrādes uzņēmumu serviss, commented by A. Livădariu on <http://blog.viorelros.eu/2020/08/02/desen-sau-model-comunitar-inregistrat-elemente-efectiv-protejate/>.

mark who are bothered by signs registered as marks and which are contrary to public order. In the case of "**La Mafia**", the target audience of the restaurant chain thus identified is the public that appreciates Italian food. But the sign is also visible to non-lovers of such products and even to those who do not frequent restaurants at all, so we believe that, in principle, in the case of marks contrary to public order and morality, the relevant public cannot be limited to the target audience.

It is true, however, that being temperamentally different and with different levels of training and information, their reactions to the signs will be different, so that the general interest will have to be related to the interest of the majority and not to the interest of all. But by eliminating, as happened in "**La Mafia**", those at the extremes, *i.e.*, "**that part of the public that nothing shocks (...) and that can be very easily offended**", it is quite possible that "**reasonable people with an average level of sensitivity and tolerance**" will be in the minority. If this is the case (we have no arguments/documents either for or against), can we then talk about satisfying the general interest by cancelling the registration of the trademark "**La Mafia**"?

The relevant public from a territorial point of view has been determined according to art. 7(2) of Regulation 207/2009, which states that the absolute grounds for refusal "shall apply even if the grounds for refusal exist only in part of the Community".

In the case of "**La Mafia**", it is of course possible that the sign also containing these words and which was registered by the EUIPO in 2007 as a trade mark of the European Union and used in Spain as a registered trade mark (until 15.03.2018 and subsequently in a form which cannot be considered significantly different or less pernicious than its original form and in fact still with trade mark value, true, unregistered) for a network of restaurants with Italian specificity, emotionally affect the majority of Italians (considered the relevant audience for brand evaluation), but this has been shown not to be the case for Spaniards, who frequent these restaurants in large numbers (joining the "Mafia Fidelity Club" brings the advantage of a discount on meals and the chance to win various prizes) despite the fact that Spain is considered the second home of the Italian Mafia⁴³ and a mafia paradise with over 400 mafia-type organizations⁴⁴.

But if the emotional reaction were evaluated quantitatively (because until such an evaluation is made, we only have an unproven claim), it is very likely that the majority of the relevant public, including those in Italy, would (no longer) consider themselves offended by the use of the word "mafia" in registered trademarks or other distinctive signs or logos. In any event, it has not been claimed, requested or proved that a survey with relevant conclusions on these issues was carried out on the initiative of the plaintiff in the lawsuit, and we believe that since "emotional distress" (and which is a matter of good morals, not public order) was alleged, such evidence would have been relevant.

If we assess only qualitatively, then the criterion of the "common good" ("public interest") could be considered to be met by cancelling the registration of the mark "**La Mafia**" because repression by any means, including the invalidation of a registration of a mark contrary to public order, is justified by the need to protect the public interest, which is that there should be no such marks on the market. But did the cancellation of the "**La Mafia**" trademark registration result to this?

The General Court of the European Union, as is apparent from para. 26 of the judgment, appears to have referred, when assessing the trade mark „**La Mafia**", to what in trade mark law we call "**the relevant public**" and **excluded in the assessment of the conformity/non-conformity of the mark "La Mafia" with public order and morality**" both the relevant public which is not shocked by anything and the public which may very easily be offended", stating that the assessment must be made according to "**the criterion of a reasonable person of average sensibility and tolerance**". But it also added that "**for the purposes of examining the ground for refusal under art. 7(1)(f) of Regulation no. 207/2009, the relevant public may not be restricted to the public directly targeted by the goods and services for which registration of the mark is sought, it being necessary to 'take into account the fact that the signs to which this ground for refusal relates will shock not only the public targeted by the goods and services covered by the sign, but also other persons who, without having an interest in those goods and services, will encounter the sign incidentally in their daily lives'** (recital 27).

This last argument is, in our view, important, although the TEU does not give it the full and deserved relevance since it continues to refer in the following recitals of the judgment to the "relevant public" (which is limited) when assessing the impact of the mark "**La Mafia**". **We believe that public order does not relate only to a segment of the public, not only to professional or specialised consumers, but to the general public, to the**

⁴³ Italian mobsters set up second residence in Spain | International | COUNTRY, available at <https://elpais.com/internacional/2021-08-19/las-mafias-italianas-fijan-su-segunda-residencia-en-espana.html>; and Silent invasion of Italian mobsters in Spain | Politics | COUNTRY, available at https://elpais.com/politica/2016/11/11/actualidad/1478882478_347375.html.

⁴⁴ Spain, a mafia paradise, at <https://adevarul.ro/stiri-externe/europa/spania-paradisul-mafiilor-928092.html>. According to the post, which quotes the Spanish daily Que, "Spanish police estimate that there are around 400 active mafia groups in Spain, engaged in 40 criminal activities and belonging to 35 different nationalities."

public as a whole, because by definition public order is the same for everyone.

Moreover, having analysed the application of the applicant Santa Conte which was refused registration of the trade mark "**CANNABIS STORE AMSTERDAM**" by the EUIPO in a judgment of 12.12.2019, the TEU held (correctly in our view) that the relevant public was "**the general public of the Union**" and that "*since, in the trade mark application, the applicant is targeting everyday consumer goods and services intended for the general public, without distinction according to age, there is no valid reason to limit the relevant public solely to the young public*"⁴⁵.

Therefore, we conclude that:

- when examining the conformity of a mark with public order, the assessment must be made by reference to the public at large (the general public) and not by reference to a specialised public or a public made up only of reasonable persons with an average level of sensitivity and tolerance. In other words, the "relevant public" made up of the consumers who constitute the target public for the goods/services is ... irrelevant in assessing the conformity of a mark with public order and good morals.
- the general interest in such cases coincides with the interest of the majority of the public and cannot be limited to the target audience and, of these, to the "average consumer".
- in assessing the public interest, account must be taken of the perverse effects of a measure because, in the present case, it was foreseeable that the declaration of invalidity of the trade mark "La Mafia" would not result in its use being abandoned in another form and that the declaration of invalidity had the effect of increasing interest in it and increasing its reputation.
- in the present case, we believe that it is rather a matter of a public interest, which is expressed (justifiably) to prohibit the use of a sign as a trade mark when this sign is considered contrary to public order.
- the cancellation of the registration of the sign did not satisfy Italy, the public interest or the general interest (invoked) since the sign continues to be used as a trade mark, even if unregistered).

14. The notion of public order in trade mark law

Public order in law (not to be confused with public order in fact, although there is a link between them) and good morals exist in legal life to make possible and protect the general interest (the common good). Frequently used without ever having been used, the concept of public order is considered difficult and even impossible to define, at least in a generally acceptable and accepted manner and/or sheltered from criticism.

Some authors, in trying to define it, quickly found it to be a futile attempt because it is only an adventure on quicksand, on thorny paths or on dangerous ridges, and discouraged, admitted not only that it cannot be defined and clarified, but also that it has the power to seduce, to entice through diversity, evolution, fantasy, to be always surprising, to encourage or discourage. Moreover, they concluded (true, at the beginning of the last century) that "*it would be illusory and inequitable for this concept of public order to be condemned to immobility by being framed in a legal definition, which cannot be other than imperfect. Today, it is unanimously accepted: the content of public order cannot be defined or exhaustively listed*"⁴⁶. A somewhat similar opinion has been formulated in our doctrine by Professor Bazil Oglindă who believes that "*the scientific approach must be limited to determining the content of public order*".⁴⁷

In a 1953 paper, Philippe Malaurie reviewed 22 definitions of public order and then humorously added that he proposed one himself "*to convince the reader of the impossibility of formulating a synthetic definition of public order*"⁴⁸. The definition proposed by Ph. Malaurie ("*public order is the proper functioning of the institutions indispensable to a collectivity*") is not convincing, a statement that belongs to Jacques Ghestin⁴⁹ (with which we agree) without proposing another, he merely stating his support for a definition by M. Planiol (also reviewed by Ph. Malaurie) but which, in our view, only formulates the criterion for identifying the public order provision. According to M. Planiol, "*a provision is of public order as soon as it is inspired by a general interest which would be compromised if private individuals were free to prevent the application of the law*"⁵⁰, a similar definition being formulated in our doctrine by Professor Paul Vasilescu. According to the latter, "*public order is merely the expression of a general interest which may or may not be expressed explicitly by a rule, norm or principle of law*"⁵¹.

⁴⁵ Judgment of 12.12.2019 in Case T-638/18 available at CURIA - Documents, at https://curia.europa.eu/juris/document/document_print.jsf?docid=221872&doclang=RO.

⁴⁶ A. Weiss, *Manuel de droit international privé*, L. Larose & L. Tenin, Paris, 1905, p. 375.

⁴⁷ B. Oglindă, *Business Law, General Contract Theory*, Universul Juridic Publishing House, Bucharest, 2012, p. 144.

⁴⁸ Ph. Malaurie, *L'ordre public et le contrat (Etude de droit civil comparé. France, Angleterre, U.R.S.S.)*. The same Ph. Malaurie also published *L'ordre public et les bonnes mœurs* in 1952 and *L'ordre public à la fin du XXe siècle* in 1996. *Apud* A. Jeauneau, *op. cit.*, p. 3.

⁴⁹ J. Ghestin, *Traité de droit civil, La formation du contrat*, 3^e ed., LGDJ 1993, p. 86.

⁵⁰ *Ibidem*.

⁵¹ P. Vasilescu, *Civil Law. Obligations*, Hamangiu Publishing House, 2018, p. 333-336.

More plastic than the authors quoted above, a British judge, James Burrough⁵², 200 years ago said that *"Public policy is a very unruly horse, and when you get astride, you never know where it will carry you. It may lead you from the sound law"*⁵³, but his metaphor, which is frequently quoted in the doctrine and jurisprudence of common law states, has an equally beautiful rejoinder: ***"with a good rider in the saddle, the wild horse can be kept under control. Can jump over obstacles. He can leap the crooked walls and bring you down on the right side of the law"***, and the good horseman can be none other than the judge.

The metaphor of the "wild horse" also seems to us appropriate for the *"La Mafia"* case since the TEU considered that the existence of other marks containing the word "mafia" or of the same type (Contra Bando) is irrelevant in determining whether the mark *"La Mafia se sienta a la mesa"* is contrary to public order because *"decisions on the registration of a sign as a trade mark of the European Union adopted by the Boards of Appeal pursuant to Regulation no. 207/2009 are issued in the exercise of a non-discretionary power and not of a discretionary power. The legality of those decisions must therefore be assessed solely on the basis of that Regulation and not on the basis of a decision-making practice predating them"* (paragraph 49 of the judgment). However, the „unruly horse" has registered at least one mark containing the word "mafia" after the judgment of 15 March 2018. This is the *"Coffemafia"* trademark registered in 2020 and is no less critical in its message than *"La Mafia se sienta a la mesa"*.

In another famous judgment, also handed down in the United Kingdom in 1851, a definition of public order is formulated which seems to us the best of those we have identified. According to it ***"public order is a principle of law which holds that no one may lawfully do that which tends to harm the public or against the public good, which may be called ... law order or public order in relation to the administration of law"***⁵⁴.

We also recall here that Professor Mircea Costin formulates a definition of public order with reference to its content and its evolving or changing character: *"the scope of application of public order - he says - does not always remain the same, it is variable, always changing in harmony with the political, social and economic conceptions of the legislator and differs from country to country, depending on the political dominance of the conception of the ruling political class in that country"*⁵⁵.

The trademark *"Opium"* is a good example to demonstrate the change in the content of public order, because after being initially rejected for registration as contrary to public order and morality, after a long legal battle it was admitted for registration to designate perfumes, being judged not to be contrary to French public order, because *"an abundant literature has familiarized the public with the figurative meaning of this word, which signifies the removal of real difficulties and evasion in dreams."*⁵⁶

In law in general, and in trade mark law in particular, public order is immaterial (unlike public order in a locality which is a state of fact) and is of a regulatory nature, limiting certain rights and/or freedoms in order to protect the general interest, identified, as we have shown above, with the common good. It is a natural limitation, the aim being to prevent violence, crime, conflict, the denial of what is unacceptable and contrary to the common good. The texts of the European Union trade mark laws (there are no differences between the regulations in force at the time of registration of the trade mark and its cancellation on these aspects⁵⁷) are clear when they provide that:

(i) The exclusive right to use a sign as a trade mark is acquired by registration (the wording of the law is different, but this is the essence of the law and we believe this should be the correct wording);

(ii) A sign may constitute a trade mark if it is capable of distinguishing the goods and services of one undertaking from those of other undertakings and if it can be represented in a register (of trade marks) in such a way as to enable the competent authorities and the public to determine clearly and precisely the subject-matter of the protection conferred on the proprietor of that trade mark;

(iii) Infringement by registration as trade marks of the rights of proprietors of earlier trade marks constitute relative grounds for refusal of registration and, where appropriate, for cancellation of registration, which only arise in the event of opposition by those proprietors of earlier trade marks or a subsequent application for registration by them;

(iv) shall be an absolute ground for refusal of registration and shall be applied **ex officio** by the authority (EUIPO in the case of EU trade marks), inter alia, if the sign is contrary to public order and accepted principles of

⁵² James Burrough (1749-1837), British barrister and judge of the Court of Common Pleas and knighted was highly regarded for the common sense and language of his judgments.

⁵³ Way back in 1824, Burrough, J., in *Richardson v. Mellish* [1] said: "Public policy is a very unruly horse, and when you get on it, you never know where it will take you. It may lead you from the sound law".

⁵⁴ Reprinted in the European Encyclopedia of Law (BETA), available at <https://lawlegal.eu/egerton-v-brownlow/>, accessed 06.06.2022.

⁵⁵ M.N. Costin, C.M. Costin, *Dictionary of Civil Law from A to Z*, 2nd ed., Hamangiu Publishing House, 2007, p. 739.

⁵⁶ Paris CA, 4th Chamber, 07.05.1979, quoted in A. Bertrand, *Droit des marques. Signes distinctifs – noms de domaine*, 12th ed., Dalloz, 2005, p. 87.

⁵⁷ See art. 7, 37 and 52 of Regulation (EC) no. 207/26.02.2009 and art. 7, 42 and 59(a) of Regulation (EU) no. 11001/14.06.2017.

morality. The examination of this absolute ground for refusal is *ex officio*, but the declaration of invalidity is made following the filing of an application. **This means that in the absence of an application by persons entitled to make such an application, trademarks may exist on the market which are contrary to public order and accepted principles of morality** where the Office has not considered that registration should be refused.

We agree that the right to register signs as trademarks must be limited, as trade mark laws everywhere rightly do by establishing absolute and relative grounds for refusal of registration.

But we doubt that the use of the words "*La Mafia se sienta a la mesa*" as even dominant elements of a mark makes the mark in question contrary to public order. Because, as shown below, where we examine the issue of "good morals" as an absolute ground for refusing to register signs as trademarks, another fundamental right, that of freedom of expression, is opposed to such a possibility, and in order not to be repetitive, we develop it below.

We add here, however, that the annulment of the registration of the mark "*La Mafia*" by the judgment of the TEU of 15 March 2018 did not solve the problem of violation of public order through its use because it continues to be used as an unregistered mark, that its annulment only increased its notoriety, that it is not excluded that in the future it will be opposed to third parties as a well-known mark, that the use of the sign cannot be prohibited - neither in its original form nor in the form in which it is now used - so that the intended purpose has not been and cannot be achieved.

15. The notion of good morals in trademark law The "Fack Ju Göhte" mark vs. the phrase "Fuck You Goethe"

Article 7(1)(f) of Regulation (EC) no. 40 of 20 December 1993 on the Community trade mark, in force at the date of registration of the trade mark "La Mafia", Regulation (EC) no. 207 of 26 February 2009 on the Community trade mark, in force and applied at the date of the judgment of the EUIPO and the TEU in its judgment of 15.03.2018 and Regulation (EU) no. 1001/14.06.2017 on the European Union trade mark are identical in content and according to them the registration of trade marks "*which are contrary to public policy or to accepted principles of morality' is refused*".

The word "or" when used in a text usually has a disjunctive function to link mutually exclusive or alternative notions and this is the meaning of the word "or" in our text. This means that the legislator makes a clear distinction between them, but often in case law such a distinction is not made, they are linked by the conjunction "and", which means that the notions are considered either of the same kind, or equivalent or at least corresponding or even cumulative. And we have already expressed the opinion that there is a close link between public order and good morals, that in principle, public order cannot contradict good morals, that the field of good morals is much broader than that of public order, but we do not consider them in any way equivalent but only closely linked and complementary.

However, there is also a judgment of the CJEU⁵⁸ in which the distinction between public policy and good morals is made, admittedly briefly, but also with reference to the Opinion of Advocate General M. Bobek⁵⁹, which is also extensive on this aspect and was adopted by the Court. This is the Judgment of 27 February 2020 on the "*Fack Ju Göhte*" trade mark, admitted for registration by the CJEU as not being contrary to good morals, although the EUIPO and the TEU considered it contrary to good morals.

Doctrine is not much more generous in explaining the notion of "good morals", and among the authors and works identified by us in Romanian doctrine, two caught our attention.

The first is the opinion of academician Liviu Pop who defined good morals as "*the totality of the rules of good conduct in society, rules that have taken shape and permeated the consciousness of the majority of the members of society, whose observance has become obligatory, through long experience and practice, ensuring respect for social order and the common good, in a word, the protection and realization of the general interests of a given society*"⁶⁰.

The second is that of Professor Paul Vasilescu and according to him, good morals should be understood as a "*set of ethical rules that are known and shared by most members of society, as the morals of public opinion*"⁶¹. His Lordship, noting the crisis and confusion of values, also offers a criterion for identifying these rules, stating that "*common sense and secularised Christian values constitute the practical criterion applicable in a concrete*

⁵⁸ Judgment of the CJEU, 27.02.2020, Case C-240/18 P, *Constantin Film Produktion GmbH v. European Union Intellectual Property Office (EUIPO)*.

⁵⁹ Oral arguments of Advocate General Michal Bobek delivered on 2 July 2019(1) in Case C-240/18 P, <https://curia.europa.eu/juris/document/document.jsf?jsessionid=FBC47417A10F74AB8AC75982ACF45C45?text=anddocid=215701andpageno=0anddoclang=ROandmode=reqanddir=andoc=firstandpart=1andcid=3424512>.

⁶⁰ L. Pop, *op. cit.*, p. 216.

⁶¹ P. Vasilescu, *op. cit.*, p. 334.

case to assess whether or not a particular convention is contrary to morality"⁶².

Determining the good morals that have the effect of limiting rights (in this case, to register a sign as a trade mark) is, however, an even more difficult task than identifying the content of public policy, because good morals have a moral basis which can only be subjective, whereas public policy has a legal basis which is objective. However, the determination of the content of good morals can only be the work of the judge, which means that we also confer on judges a social health function of safeguarding social ethics. This implicitly means that good morals are represented by the moral concepts of judges. Uniformity of morals (as well as public order) is absolutely necessary for the cohesion of society. Determining good morals is a necessary task for the judge but *"in the absence of objectively defined morals, there is a risk of identifying good morals with the moral conception of the judiciary or with the moral concepts of the judiciary"*⁶³ which can do so under the legality control of the Courts of Cassation

Good morals are only the moral aspect of public order⁶⁴. They are those moral rules which, in the interest of society (general, common, public interest), must be respected from and by one's own will. The dividing line between "public order" and "good morals" is, however, difficult to draw and if a boundary exists between them, then it is very permeable, for both categories, the content remaining vague, fluid, mutable in time and space, contextual.

Are good morals no longer among the grounds limiting the exercise of rights? The French doctrine has noted this and bases its opinion on the elimination from the Civil Code as amended in 2016⁶⁵ (massively, n.a.) of the grounds limiting the contractual freedom of good morals and which is in line with the case law of the French courts prior to this amendment⁶⁶.

And in our doctrine the academician Liviu Pop points out that ***"there is a real danger that in the future, the concept of good morals will become devoid of real content and substance and become inoperative"***⁶⁷. Although we believe that this will not happen, we must nevertheless note that it is undeniable that there is a tendency to dilute what we call "good morals", to reduce the consistency and value of content since attitudes, actions and behaviours considered immoral a short time ago, under the pretext and increasing pressure of human rights, are now considered moral, and not even criticism of them on the basis of other fundamental rights, such as freedom of opinion, freedom of expression or the right to disagree, is not granted anymore. The CJEU's decision to grant registration of the ***"Fack Ju Göhte"*** trade mark is good evidence of this trend.

This judgment and the conclusions of Advocate General M. Bobek also have the merit of having provided arguments that we consider relevant to the criteria for distinguishing public order from good morals. In analysing these differences, it has been shown that the essential difference between the two concepts lies in the way in which they are established and therefore recognised, because whereas refusal to register a trade mark on grounds of public policy is based on an assessment made on the basis of objective criteria, refusal of registration on grounds of public policy involves the examination of subjective values. Public order, says M. Bobek, is *"the normative expression of the values and objectives defined by the relevant public authority, expresses the wishes of the public regulatory authority regarding the rules to be observed in society, and its content must derive from official normative sources and/or documents of public interest (...) it must first be created by a public authority and only then followed"*⁶⁸. However, as M. Bobek, refers to *"the interpretation of values accepted by consensus or imposed by the majority of a society at a given time, it refers to the set of rules that aims to induce and maintain behaviour. And while public order is top-down (from authority to those in authority who are constrained in their behaviour), morality evolves from the bottom up."*⁶⁹.

We believe, however, that limiting public order to values established by law alone is not acceptable. Our doctrine considers that the extent of public order is determined by reference to the Constitution, laws and rules established by custom or case law⁷⁰.

Good morals, like public policy, is determined on a case-by-case basis, is not immutable in its content and is subjective, the interpretation given to the concept of good morals in the case of the ***"Fack Ju Göhte"*** trademark being relevant. Thus:

⁶² *Ibidem*.

⁶³ J. Ghestin, *op. cit.*, p. 106.

⁶⁴ *Ibidem*.

⁶⁵ By Ordinance 2016-131.

⁶⁶ G. Chantepie, M. Latina, *La réforme du droit des obligations. Commentaire théorique et pratique dans l'ordre du Code civil*, Dalloz, 2016, p. 85.

⁶⁷ L. Pop, *Treatise on Civil Law. Obligations. vol. III, Non-contractual Obligatory Legal Relations*, Universul Juridic Publishing House, Bucharest, 2020, p. 216.

⁶⁸ M. Bobek, Conclusions in Case C-240/18 P.

⁶⁹ *Ibidem*.

⁷⁰ P. Vasilescu, *Civil Law. Obligations*, Hamangiu Publishing House, Bucharest, 2018, p. 333.

(i) On 21 April 2015, the applicant Constantin Film Produktion applied to the EUIPO for registration as a trade mark of the European Union (for numerous goods and services in 13 different classes) of the word sign "**Fack Ju Göhte**", which is also the title of a successful film comedy (made in 2013) in Germany, followed by two more films called "**Fack Ju Göhte 2**" and "**Fack Ju Göhte 3**" in 2015 and 2017 respectively.

(ii) On 25 September 2015, the trade mark examiner, citing the sign as being contrary to accepted principles of morality and relying on art. 7(1)(f) and 7(2) of Regulation 207/2009, decided to deny the application;

(iii) The applicant's appeal to the EUIPO was dismissed by the Fifth Board of Appeal by decision of 1 December 2016, pursuant to art.s 58-64 of Regulation 207/2009;

(iv) By application to the General Court of the European Union dated 3 February 2017, the applicant sought the annulment of the Decision of the Board of Appeal and the TEU, by Judgment of 24 January 2018, rejecting the application, also held that the sign for which registration was sought was contrary to good morals;

(v) Against the judgment of the TEU of 24.01.2018, Constantin Film Produktion GmbH appealed (which was heard in adversarial proceedings with the EUIPO), and by judgment of 27.02.2020, the Court of Justice of the European Union annulled the judgment of the TEU of 24.03.2018 and the decision of the Fifth Board of Appeal of 1 December 2016, with the consequence that the sign "**Fack Ju Göhte**" was registered as a trade mark for all the goods and services for which registration was sought.

The CJEU held that the ground for absolute refusal of registration was only the sign's contradiction with public morality, not with public policy, so that the appeal was examined on that ground alone. The concept of good morals, the Court pointed out, *"must be interpreted in the light of its ordinary meaning as well as of the context in which it is generally used. However, as the Advocate General has essentially pointed out (...), this notion refers, in its ordinary sense, to the fundamental legal values and norms to which a society adheres at a given time. These values and norms, which may evolve over time and vary spatially, must be determined according to the social consensus prevailing in that society at the time of assessment. In making this determination, due account must be taken of the social context, including, where appropriate, its cultural, religious or philosophical diversities, in order to objectively assess what that society considers morally acceptable at the time."*

The fact that a sign is in bad taste is not sufficient to consider it contrary to morality, as this requires that the relevant public, made up of reasonable people with average thresholds of sensitivity and tolerance, perceive it as contrary to the fundamental moral values of society, with elements such as legislative texts, public opinion and the reactions of the relevant public to similar signs in the past being relevant in the assessment.

In the grounds of its judgment of 27.02.2020, the Court also pointed out that the phonetic similarity of the sign "**Fack Ju Göhte**" with the expression "**Fuck You Goethe**" is also not denatured in such a way as to offend or shock the public because, on the one hand, the expression "fuck you", although in its main meaning it has a sexual connotation and is marked by vulgarity, used in different contexts it expresses distrust, anger or contempt.

We note from the recitals of this CJEU judgment the arguments that the sign "**Fack Ju Göhte**" coincides with the titles of three successful film comedies seen by millions of viewers who were not emotionally affected by these titles and that in the examination of the sign it is not possible to disregard contextual elements likely to clarify how the relevant public perceives this sign. This argument is, *mutatis mutandis*, also fully valid for the trademark "**La Mafija**" (in the judgment of which, before the CJEU, numerous films, literature and the existence of other trademarks containing the word "mafia" were invoked) so that we do not exclude the fact that if an appeal had been lodged against the judgment of the CJEU of 15.03.2018, the registration would have been validated.

Equally interesting and relevant (also for the judgment given by the TEU on the "**La Mafija**" trade mark) is another argument of the CJEU in para. 56, according to which in trade mark matters, in application of art. 7(1)(f) of Regulation no. 207/2009, account must also be taken of the principle of freedom of expression, which the CJEU wrongly held did not exist in the field of trade marks (and whose applicability was recognised by the EUIPO at the hearing, the CJEU judgment notes), a principle which is formulated in art. 11 of the Charter of Fundamental Rights of the European Union and supported by recital 21 of Regulation 2424/2015, amending Regulation 207/2009, which provides that "(...) **In addition, the provisions of this Regulation should be applied in a way that ensures full respect for fundamental rights and freedoms, in particular freedom of expression.**"

We cannot fail to note here that the argument of freedom of expression as a fundamental right clashes with that of the absolute prohibition of the registration as trademarks of signs contrary to public policy and the question then arises: who should be given priority: the fundamental right of freedom of expression or the obligation to respect the public order of the signs for which registration is sought?

We believe that the answer can only be that the fundamental right is the hard core of the right and is part of public order, so that the exercise of a fundamental right (to free expression) cannot be considered a violation of public order. But in this case any sign for which registration as a trade mark is sought is an exercise of freedom of expression as a fundamental right, so its registration cannot infringe public policy. In other words, the

prohibition of registration of signs contrary to public policy as trade marks becomes unnecessary. This means that all decisions rejecting signs as trade marks on the grounds that they infringe public policy violate a fundamental right of applicants.

16. Is freedom of expression a threat to trademark laws?

The word "*slants*" has a negative connotation in American English and is used in a pejorative sense to discredit Asians. In 2006, the all-Asian American dance-rock band The Slants was formed in Portland, Oregon. The band has become known and appreciated not only for its music but also for its civic, anti-racism activities, raising money for research, fighting bullying, building community help centres, etc. In 2010, bandleader Simon Tam applied for trademark registration of the word "*The Slants*" for entertainment services, but the US Patent and Trademark Office (USPTO) rejected the application under the word that under the Lanham Act (Trademark Act of 1946) it is prohibited to register trademarks that may disparage any "*persons, living or dead, institutions, beliefs or national symbols or bring them into contempt or disrepute.*"

As Simon Shiao Tam and his band were also seeking, among other things, to mitigate/eliminate the pejorative connotation for the benefit of Asians (because there was no ban on the use of the word "The Slants" for his band), he stalled in his efforts, so a lengthy legal battle ensued. In December 2015, the U.S. Court of Appeals for the Federal Circuit declared the Lanham Act unconstitutional in part and allowed "*The Slants*" trademark to be registered, and the U.S. Supreme Court ruled on June 19, 2017, in the case known in the doctrine as *Matal vs. Tam*⁷¹ that the disparagement clause in the Lanham Act violates free speech rights and that the government cannot discriminate against offensive trademarks⁷². Commenting on the decision, Professor Eugene Volokh⁷³ said it makes clear that "*speech that some find racially offensive is protected not only against outright prohibition, but also against lesser restrictions.*"⁷⁴

On June 18, 2014, the Trademark Trial and Appeal Board (TTAB) cancelled the six Redskins⁷⁵ marks belonging to the Washington Redskins football team's Pro-Football Inc, the reason being the disparaging connotation of the word "redskins" to Native Americans and that it may disparage Native Americans in violation of the disparagement clause of the Lanham Act. The TTAB decision was appealed on the grounds of "violation of federal case law and violation of free speech" but the appeal was dismissed by the US District Court in Alexandria.

The trademarks were registered in the 60s and 70s of the last century and have been used without dispute. In 1992, a group of seven Native Americans petitioned to cancel their registration but were unsuccessful, a cancellation decided by the USPTO in 1999 was overturned by a district court on the grounds that there was no evidence of discrediting, appeals were dismissed on formal grounds (negligence, lack of diligence on the part of the plaintiffs), and the Supreme Court refused to hear the case.

A new initiative by the National Congress of American Indians, supported this time by President Barack Obama and 50 senators, has ended in success for the plaintiffs, with the trademarks being cancelled. The club was able to continue to use its name, but in 2020, amid the unrest and anti-racism demonstrations following the police killing of African-American George Floyd, it decided to drop the use of the word "redskin" from its name.

Although the judgments in the two cases are contradictory, the conclusion that emerges is that freedom of expression is a danger to the trade mark law rule that marks contrary to public policy and morality are prohibited from registration.

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⁷² L.P. Ramsey, *First Amendment protects offensive trademarks | Regulatory Review*, at <https://www.theregview.org/2017/07/25/ramsey-first-amendment-protects-offensive-trademarks/>.

⁷³ Eugene Volokh is a mathematician, computer scientist and lawyer. He has a rich activity as a lawyer and author of legal works.

⁷⁴ *Apud* Lisa P. Ramsey.

⁷⁵ The decision is available on USPTO TTABVue. Proceeding Number 92046185, at <https://ttabvue.uspto.gov/ttabvue/v?pno=92046185&pty=CAN&eno=199>.

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