

THE DOCTRINE OF BAD FAITH IN EU TRADEMARK LAW: EUIPO TOOLS AND PRACTICES

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INTRODUCTION

In the context of the digital economy, the conventional understanding of a trademark as a distinctive sign intended to identify the goods of specific manufacturers and grant the rights holder a legal monopoly on its use within a specific territory is undergoing a significant transformation. The cross-border digital space is widely used by entrepreneurs to pursue their economic interests. This complicates the application of the territorial principle of exclusive rights protection, expands the range of goods due to market growth and, consequently, increased consumer demand, which generally leads to an increase in the number of trademarks and their value as intangible corporate assets and, accordingly, instances of unfair competition.

The European Union Intellectual Property Office (EUIPO) is one of the largest decentralized agencies of the European Union (EU), located in Alicante, Spain. Recognized in 2021 as the most innovative intellectual property (IP) office in the world, the EUIPO registers EU trademarks (EUTMs) and Community designs (RCDs), which ensures legal protection for the relevant IP objects in all EU member states. The Office also cooperates with national and regional IP offices in the EU and coordinates the activities of the European Observatory on Infringements of Intellectual Property Rights.¹

European Union Trade Mark (Community Trade Mark, CTM). EU Directive No. 2015/2436 of 2015, which entered into force in January 2016, introduced the term “ ” (abbreviated as EUTM), which is now officially used. As of January 1, 2025, **2,622,904** trademarks had been registered in the EU under the EUTM procedure. Given that the EU comprises 27 member states, following its expansion, the EU now unites over 500 million consumers. **Over 160,000** trademarks are registered in the EU annually, and they are in high demand among Ukrainian businesses as well. **At the same time**, trademarks

¹ЄС та Україна домовилися про підтримку інтеграції України до системи інтелектуальної власності ЄС. URL: <https://nipo.gov.ua/ies-ta-ukraina-domovylysia-pro-pidtrymku-intehratsii-ukrainy-do-systemy-intelektualnoi-vlasnosti-ies/> (дата звернення: 03.06.2026).

are the most frequently counterfeited subject of IP rights in seizures on the EU internal market (over 93% of seized items).²

The intellectual property offices (IPOs) of EU member states have been actively collaborating to harmonize trademark and design (industrial design) practices since the establishment of the European Union Intellectual Property Network (EUIPN) in 2011. Through the Convergence Program (2011–2015), seven areas of trademark and design practice were harmonized. The common practices developed as a result of the program (CP1–CP7) have been widely implemented across the EU and are currently in force and actively used.

In December 2015, the European Parliament and the Council adopted a reform package on EU trademarks. The package contained two legislative instruments, namely Regulation (EU) No. 2017/1001 of the European Parliament and of the Council of June 14, 2017, on the European Union trademark (EUTMR) and Directive (EU) No. 2015/2436 of the European Parliament and of the Council of December 16, 2015, to approximate the laws of the Member States relating to trade marks (TMD). Along with new provisions on substantive and procedural matters, these regulations have created a stronger legal foundation for cooperation.

In accordance with the provisions of Article 151 of the EUTMR, promoting cooperation with the intellectual property offices (IPOs) of Member States regarding the harmonization of practices and tools in the field of trademarks and designs has become a key task for the EUIPO. Article 152 of the EUTMR explicitly states that this cooperation must include the development of common examination standards and the establishment of common practices. Furthermore, Articles 51–52 of the EUTMR describe the ability of Member States' IPOs to cooperate in the convergence of practices and tools. *Convergence is a process of alignment, convergence, and compromise.*

Based on this legal framework, in June 2016, the EUIPO Management Board agreed to adopt European cooperation projects. The projects were designed to build on past successes while improving processes and expanding the scope of cooperation. In the area of convergence, it included a project specifically dedicated to identifying and analyzing potential new harmonization initiatives: the convergence analysis project. The project analyzed the trademark and design practices of Member State IPOs to identify areas where divergences existed, and by assessing the likely impact, feasibility of the potential scope, existing legal constraints, levels of interest among users, and practicality for MS IPOs, to identify those areas where common practices would be most beneficial to EUIPN stakeholders.

² The European Union brand: figures and developments. URL: <https://depot-de-marque.com/en/lue-brands-figures-and-trends/> (date of access: 03.06.2026).

As a result of this project, five Common Practices (CP8-CP12) were developed and implemented. Thanks to specific provisions codifying cooperation and the convergence of practices with EU law, Articles 151-152 of the EUTMR and Articles 51-52 of the TMD provide a clear mandate for further progress. Accordingly, the Convergence Project was relaunched in July 2020 to identify and define new convergence projects that best meet the needs and interests of the European IP community .

“CP13 – Bad-faith trademark applications” was recommended as the first convergence project launched as a result of Convergence Analysis 2.0 and the thirteenth overall. In November 2023, the EUIPO Administrative Board adopted the General Practices CP13 and CP14 via a written procedure, following their endorsement at the meeting of trademark representatives in October 2023.

The purpose of this study is to analyze the doctrine of bad faith in EU trademark law, case law, and the content of the two latest EUIPO practices: CP13 – regarding trademarks registered in bad faith – and CP14 – regarding trademarks that are contrary to public policy or accepted principles of morality – as well as the tools for their application in the EU and Ukraine in the context of a globalized trademark market. Let us examine these practices and the tools for their implementation in more detail.

1. The Bad Faith Doctrine in European Union Trademark Law

CP13 General Practice (Bad-Faith Trademark Applications) provides a general understanding of the concept of bad faith in trademark applications and other related concepts, including terminology associated with the assessment of bad faith and certain scenarios. It also includes an agreement on general factors for assessing bad faith in trademark applications.

General Practice CP14 (Trademarks Contrary to Public Policy or Accepted Principles of Morality) provides a general understanding of the concepts of public policy and accepted principles of morality, clarifying the relationship and differences between these two concepts. In addition, it establishes general criteria for assessing whether a mark is contrary to public policy and/or accepted principles of morality, and provides illustrative examples of the criteria and groups of identified marks.

Both General Practices were developed over the past two years through public consultations and with input from several EUIPN stakeholders. Working groups, comprising experts from national IP offices and EU user associations, played a central role in drafting the documents. EU intellectual property offices are expected to implement the recently adopted General Practices in the spring of 2024. At the same time, relevant general notices will be posted on the websites of the EUIPO and the respective IP offices.

Given that addressing bad faith in trademark applications is a highly relevant topic, the EUIPO, in collaboration with the intellectual property offices of the Member States (MS IPOs) and user associations within the EUIPO User Group, developed General Practice CP13 to assist examiners, as well as applicants, plaintiffs, and business representatives in analyzing the possible presence of bad faith in a trademark registration application.³

In accordance with the provisions of the EU Trademark Directive 2015/2436, as of January 14, 2023, all IP offices of EU Member States are required to assess bad faith as an absolute ground for invalidity. However, depending on the relevant provisions transposed in each member state, bad faith may also be assessed as an absolute ground for refusal or as a specific relative ground for refusal or invalidity (with respect to earlier trademarks protected abroad). In light of this, General Practice CP13 was developed to be applicable regardless of the type of proceeding in which bad faith is assessed by the IP offices of EU Member States. EUIPO and the IP offices of the member states associated with the EU IP Network (EUIPN) have been cooperating for many years under the Convergence Program, which aims to harmonize practices regarding trademarks and industrial designs.

As part of this cooperation, a new document has recently been developed containing common guidelines on the assessment of bad faith in trademark applications (Trade mark applications made in bad faith).⁴

This document, announced in a joint communication dated March 22, 2024, aims to increase transparency, legal certainty, and predictability, thereby facilitating the work of both EU IP Office examiners and other users of the trademark system. The Common Practice on Trademark Applications Filed in Bad Faith (hereinafter “CP13”) is the first document of its kind to be based entirely on EU case law and to contain a number of practical references to specific cases. It should be noted that procedural issues are excluded from the scope of CP13. Key concepts such as “applicant,” “earlier right,” and “opposed trademark” have been interpreted collectively to ensure the consistent application of general practice principles. As a result, users of the trademark system can rely on a uniform interpretation of these key terms throughout the EU. Since the concept of bad faith in trademark applications is

³ CP13 – A new common practice on trademark applications made in bad faith. URL: <https://www.boip.int/en/ip-professionals/news/cp13-a-new-common-practice-on-trademark-applications-made-in-bad-faith>

⁴ Trademark applications filed in bad faith. URL: https://www.obi.gr/wp-content/uploads/2024/03/CP13_CommonCommunication_Trademarkapplicationsmadeinbadfaith.pdf

not clearly defined in EU legislation, general practice aligns with the basic presumption developed in case law.⁵

Bad faith implies that the complainant has a subjective motivation, such as dishonest intent or another negative motive. There are two main aspects of bad faith: the unlawful appropriation of third-party rights and the abuse of the trademark system.

The unlawful appropriation of third-party rights refers to a situation in which the complainant focuses their activities in the interests of a specific third party, whereas abuse of the trademark system refers to cases where the applicant files a trademark registration application for purposes other than those pertaining to the primary functions of a trademark. The assessment of bad faith is based on several key principles, which are described in detail in the document and illustrated with practical examples from case law. These key principles include: the presumption of the applicant's good faith until evidence to the contrary is provided. It is important that, in a situation where objective evidence has been gathered indicating the applicant's bad faith, the applicant bears the burden (and it is in their interest) to provide counterevidence that could explain the context of the applicant's actions before a final determination of bad faith is made.

Sometimes the filing date is the date on which the absence of bad faith is assessed. At the same time, it should be remembered that facts that occurred before and after the filing may also be taken into account. A key factor in assessing bad faith is the applicant's dishonest intent. This is the primary factor that must exist on its own to establish the applicant's bad faith. A large part of the document is devoted to this issue (Section 2.4). Other typical factors identified based on prior case law are also listed, which may, depending on the circumstances of the case, be relevant in assessing bad faith.

These additional factors include: the applicant's knowledge or awareness that a third party is using or holds prior identical/similar rights; the extent of legal protection previously granted to the third party's right; the identity/similarity between the contested trademark and the prior right(s); the goods and services; likelihood of confusion; prior relations between the parties; the origin of the contested trademark and the use of that trademark since its creation; the chronology of events leading to the filing of the contested mark; the fair commercial rationale for the application for the contested trademark; a claim for monetary damages; the pattern of behavior/actions of the notifying party.

⁵ Gawel A. Common Practice of EU Intellectual Property Offices Regarding Trademark Applications Filed in Bad Faith (CP13). UPRP Quarterly. 2024. URL: https://uprp.gov.pl/sites/default/files/2024-07/2_2024_KWARTALNIK.PDF (date of access: 03.06.2026)

The above list is illustrative and non-exhaustive; none of these additional factors is mandatory for establishing bad faith. However, the more different factors that can be identified in a given case, the greater the likelihood of the applicant's bad faith at the time of filing the application.⁶ Circumstances are key, which is why Document CP13 contains many examples from case law illustrating the circumstances under which certain factors were identified and how this led to the conclusion of the applicant's bad faith.

The honest commercial rationale underlying the filing of the contested trademark. The absence of an honest commercial rationale, particularly a business strategy, behind the filing of the contested trademark may also be an important factor in determining whether the application was filed in bad faith. When assessing this factor, one scenario that relevant authorities –, including the IP Office of the Republic of Moldova – may encounter is, for example, when the applicant sought trademark registration not only for the categories of goods and/or services they were selling at the time of filing, but also for other categories of goods/services that they intended or planned to bring to market in the future. In this situation, it is important to note, as has been established in EU case law, that such a practice is, in principle, lawful. Therefore, as such, a long list of goods and/or services will not automatically be considered bad faith. However, in the context of bad faith, the practice of including certain goods and/or services in the specification may be viewed as an indicator of bad faith if it is artificial and lacks honest commercial logic, including a business strategy.⁷

Several examples from EU case law where the facts of the case demonstrated a lack of commercial logic behind the claims in the cases cited below

Case T-663/19, MONOPOLY, 21 April 2021, EU:T:2021:211, paras. 60–77. The facts of this case showed that one of the main reasons cited by the proprietor to justify the re-filing of the same trademark was to reduce the administrative burden in opposition proceedings (by avoiding the need to submit evidence of use upon request in each such opposition). In light of the reasoning, it was clear that the applicant acknowledged that one of the advantages justifying the filing of the contested trademark was based on the fact that he would not have to continually provide evidence of genuine use of that trademark in multiple opposition proceedings. However, the applicant's explanation that it essentially sought to protect the “MONOPOLY” mark in

⁶ Joint Communication on Common Practice Regarding Bad-Faith Trademark Applications. URL: <https://uprp.gov.pl/pl/aktualnosci/informacje/wspolny-komunikat-w-sprawie-wspolnej-praktyki-dotyczacej-zgloszen-znakow-towarowych-dokonywanych-w-zlej-wierze> (date of access: 03.06.2026)

⁷ Demchenko T.S. Bad Faith of the Applicant in Trademark Legislation: monograph. Kyiv: Lazurit-Poligraf, 2008. 92 p.

relation to other goods and services in order to keep pace with technological developments and business expansion was deemed legitimate. For this reason, the contested trademark was not declared invalid in relation to goods and services not covered by the prior trademarks. However, these explanations did not justify filing the contested trademark application for goods and services identical to those covered by the prior trademarks. Furthermore, the alleged reduction in administrative burden resulting from the filing of the contested trademark was difficult to reconcile with the additional costs and administrative burden of constantly renewing and maintaining the earlier trademarks.

Case 28/01/2016, T-335/14, DoggiS (fig.), EU:T:2016:39, § 88, 90. The evidence presented in this case failed to provide any explanation as to why, from a business perspective, the applicant filed a trademark application that was virtually identical to certain earlier figurative trademarks owned by the plaintiffs and covering the same services as their trademarks, as well as those goods that are indispensable for the provision of those services. Furthermore, the applicant did not even invoke any commercial logic that would justify such a course of action. The applicant merely presented a series of unsubstantiated arguments that he was unaware of the existence of the prior trademarks owned by the plaintiffs at the time of his application for the contested trademark. Furthermore, the applicant's argument that he had extensive experience in the franchising sector could not substantiate his legitimate interest, as the experience in question pertains to the financial sector, which is entirely distinct from the fast-food sector.⁸

Another important part of CP13 is the section describing typical bad-faith scenarios (Section 2.5), such as parasitic behavior, breach of trust, defensive registrations, repeat applications, and speculative purposes. Parasitic behavior and breaches of trust are the most common scenarios in practice where bad faith can be identified. Examples of defensive registrations and repeat applications are quite rare but possible, depending on the circumstances of a particular case, so bringing this topic closer to common practices is an interesting element.

The doctrine of bad faith in trademark registration is one of the most complex institutions of intellectual property law. It serves as an absolute ground for refusing registration or declaring a certificate invalid, protecting the market from the abuse of legal protection instruments.

We will present a comparative analysis of the bad faith criteria developed by the Court of Justice of the European Union (CJEU) and the specifics of their application in Ukraine.

⁸ CP14. Trade Marks Contrary to Public Policy or to Accepted Principles of Morality. URL: <https://www.tmdn.org/publicwebsite/#/practices/2547782> (date of access: 03.06.2026)

1. Autonomous criteria for bad faith in EU practice (EUIPO / CJEU)

EU legislation (Regulation 2017/1001, Directive 2015/2436) does not provide a clear legal definition of “bad faith.” Instead, the CJEU has established a flexible standard based on an analysis of the applicant’s intent at the time of filing the application.

The key precedent is Case C-529/07 (*Chocoladefabriken Lindt & Sprüngli v Franz Hauswirth*), in which the court determined that bad faith must be assessed comprehensively, taking into account all factors of the specific case. EU case law identifies the following main criteria:

A. The existence of an intent to prevent third parties from entering the market

If the applicant knows (or ought to know) that a third party has been using a similar or identical mark on the market for a long time and files the application solely to oust that competitor or block its commercial activities, this indicates bad faith.

B. Lack of a genuine intention to use the trademark

This criterion was elaborated upon in the landmark case C-371/18 (*Sky v Skykick*). The CJEU ruled that filing a trademark application without any intention to use it for the specified goods and services constitutes bad faith if: The specification (list of goods/services) is unreasonably broad;

The applicant’s sole purpose is to abuse commercial status and block third parties (abuse of rights).

B. Attempt to circumvent legal restrictions (Repeated applications / Evergreening)

In Case T-663/19 (*Hasbro v. EUIPO – Monopoly*), the General Court of the EU ruled that the practice of repeatedly filing identical trademark applications (evergreening) with the sole purpose of avoiding the need to prove actual use of the trademark after the expiration of the 5-year grace period is in bad faith.

D. Conduct contrary to honest practices in industry and commerce

The commercial rationale behind the applicant’s actions is assessed. If the registration lacks a genuine business justification and is aimed at extorting money from a genuine manufacturer, gaining unjustified competitive advantages, or parasitizing on another’s reputation, EUIPO finds bad faith.

Each of the scenarios outlined in CP13 is illustrated with examples from case law, which helps to better understand how various factors – interact during the assessment of bad faith. These examples should provide valuable assistance to experts when examining trademark applications, as well as to users of the system, who can better understand what conduct may be considered bad faith. The above, of course, is only a general description of what the General Practice document contains. The full text is available on the

EUIPO website dedicated to general practices: <https://www.tmdn.org/#/практики/2537136>.

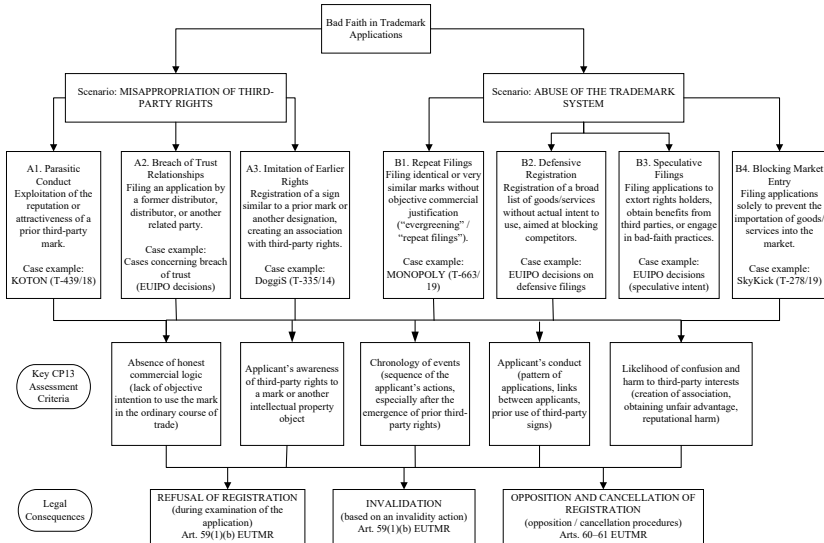


Fig. 1. Conceptual model of scenarios involving bad-faith trademark applications in the EU system

It is also worth referring to the content of the court decisions cited in the CP13 document, as the context of individual cases is extremely important when determining bad faith. CP13 represents a step forward in harmonizing trademark practice across the EU, providing greater transparency and predictability for all participants in the trademark system. This is particularly important in the context of an increasingly globalized market, where IP is protected and plays a key role in ensuring fair competition and protecting the rights of entrepreneurs.

An important step is the introduction of uniform rules for assessing bad faith as part of efforts to improve the efficiency of the trademark system. Standardized rules and regulations will reduce the time required to process applications and decrease the number of trademark disputes. This document is intended to assist experts, as well as applicants and business representatives, in analyzing potential trademark applications filed in bad faith.

The analyzed General Practice CP13 is already being applied, for example, by the Polish Patent Office regarding applications filed and invalidity

proceedings initiated after the expiration of three months from the date of publication, i.e., from June 22, 2024.⁹

Ukraine's integration into the EU IP system and cooperation with EUIPO include measures such as the mutual exchange of information on studies related to the impact of IP on the economy, as well as enforcement and the fight against unfair competition. This opens the possibility of including data on Ukrainian trademarks and industrial designs in the EUIPO's " " databases, which are the largest in the world and contain over **115 million** trademarks and over **20 million** industrial designs from five continents.¹⁰

At the same time, regarding Ukraine's priority in scientific research in this field, it is worth noting that the first to begin researching the issue of applicant bad faith in trademark legislation was a Ukrainian scholar – T.S. Demchenko, Ph.D. in Law and Deputy Director for Scientific Work at the Research Institute of Intellectual Property of the National Academy of Legal Sciences of Ukraine.¹¹ As early as 2008, her monograph "Bad Faith of the Applicant in Trademark Legislation" was published, dedicated to the study of the legal category of bad faith on the part of the applicant when filing a trademark registration application.

The work highlights the main approaches to defining the concept of applicant bad faith in accordance with the legislation of various countries in the context of their relationship to the doctrinal understanding of bad faith in legal theory, it reveals the nature of various scenarios of bad-faith conduct by an applicant when filing a trademark registration application and indicates their legal consequences, and it examines the state of legislative regulation and practical implementation of the concept of applicant bad faith in Ukraine.

The monograph draws on numerous examples from the practice of foreign patent offices and judicial bodies regarding the application of the concept of applicant bad faith. Thus, T. S. Demchenko's work was more than 15 years ahead of publications by European authors.

⁹ European Union Intellectual Property Network. Common Communication. Trade Marks Contrary to Public Policy or to Accepted Principles of Morality. April 2024. URL: https://www.tmdn.org/network/documents/10181/2569797/CP14_Common_Communication_en.pdf (date of access: 03.06.2026)

¹⁰ Kaszlikowski K. New CP14 Common Practice – Trademarks Contrary to Public Order or Morals. World Trademark Review. 2024. URL: <https://www.worldtrademarkreview.com/article/new-cp14-common-practice-trademarks-contrary-public-order-or-morals> (date of access: 03.06.2026)

¹¹ World Intellectual Property Indicators Report: Global Patent Filings Reach Record High in 2023. URL: https://www.wipo.int/pressroom/en/articles/2024/article_0015.html (date of access: 03.06.2026)

2. Trade Marks Contrary to Public Policy or Accepted Principles of Morality: EUIPO Common Practice CP14

The European Union Intellectual Property Office (EUIPO) and the intellectual property offices of the European Union (EU) member states, along with user associations, have been actively collaborating for many years to harmonize practices regarding trademarks and industrial designs. Since the establishment of the European Union Intellectual Property Network (EUIPN) in 2011, several dozen areas have been harmonized, and corresponding documents have been developed for them. The two most recent practices on which the working groups worked ran from 2021 to 2023: CP13 –regarding trademarks registered in bad faith –and CP14 –regarding trademarks contrary to public policy or public order. This analysis aims to present the rationale and structure of the second of the aforementioned practices. During the drafting of the CP14 document, both established judicial practices, as well as the existing practices of individual stakeholders and feedback received from EUIPN stakeholders, were taken into account. The document provides a general understanding of the concepts of public order and morality, explains the relationship and differences between these concepts, and establishes general criteria for assessing whether a mark is contrary to public order or morality.¹²

The criteria presented are illustrated with numerous examples. Section 1.3 of the document defines the issues that fall within the scope of practice and those that lie outside it. The same section of the document presents some general assumptions that should be kept in mind when analyzing the document. They are as follows: all entries must be assessed on a case-by-case basis, taking into account the average level of sensitivity and tolerance of the relevant audience in the given jurisdiction, and all circumstances specific to the relevant Member State and the relevant case; if the designation is contrary to public policy and public morals, the relevant criteria are applied to each of these examples.

When analyzing whether a sign is contrary to public order or morality, freedom of expression must be taken into account. It should be noted, however, that CP14 does not analyze how the assessment should be conducted. An integral part of the document is an appendix containing the main legal provisions on freedom of expression, presented solely for informational purposes; the assessment of whether there is a conflict with public order or good morals may contain a subjective element. Therefore, experts reviewing applications must provide an objective justification for their decisions, using, where possible, independent and reliable sources; The fact

¹² Звіт ВОІВ: у яких секторах і класах найчастіше реєструють винаходи, промислові зразки та торговельні марки у світі. URL: <https://nipo.gov.ua/zvit-voiv-najchastisha-geiestratsia/> (дата звернення: 03.06.2026)

that some of the examples used in the document would be acceptable (i.e., would not conflict with public policy or public morals) does not mean that they cannot be rejected on other grounds. It should be emphasized that all examples included in the document serve only to illustrate its assumptions. They were written in English and are intended to be understood as a native English speaker would understand them. They should be understood as a demonstration of the applicability of certain principles of general practice when applied to a specific community with a certain level of sensitivity and tolerance, rather than as an imposition of conclusions regarding what is contrary to public policy or proper practice at the national level. They should always be considered in the context of the relevant group and the principle to which they relate. Section 2.1 of the document provides a definition of public order and good morals. Public order can be understood as the set of fundamental norms, principles, and values of EU societies at a given point in time. It includes, in particular, the EU's universal values, such as human dignity, freedom, equality, and solidarity, as well as the principles of democracy and the rule of law, as enshrined in the Charter of Fundamental Rights of the EU. Its content must be determinable on the basis of reliable and objective sources. The document presents a list of issues covered by the fundamental norms, principles, and values common to all EU Member States, as well as examples of reliable and objective sources from which the fundamental norms, principles, and values constituting the public policy of the EU or a Member State can be identified. Good manners pertain to the fundamental values and moral norms accepted by society in the EU at a given time. Defining such values and norms requires at least some empirical experience in assessing what society (a given community) considers appropriate at a given time and what are considered acceptable standards of behavior. The importance of religious, cultural, and social norms and moral values was emphasized.

Section 2.2 of the document, illustrated with numerous examples, sets out the general principles for assessing signs that are contrary to public order or morality. It discusses potential scenarios in which signs would generally be deemed contrary to public policy or decency. This part of the document distinguishes between the concepts of good morals and bad taste and explains that a mark is considered to be in bad taste if it is vulgar, crude, or tactless, but is not offensive to a person of average sensitivity and tolerance. Such marks will not be considered a violation of good manners. This section (paragraph 2.2.2) provides guidance on the relevant time for determining whether a mark is contrary to public policy or morality; specifically, this assessment must be based on applicable public policy or fundamental moral values and accepted moral norms at the time the trademark application is filed. It was further noted (paragraph 2.2.3) that while the examination of whether

a given mark conflicts with public policy is based on objective criteria, the examination of whether a given mark conflicts with accepted practice is based on subjective values, which should be applied in the most objective manner possible. The criteria and factors to be considered in the assessment are also specified. The following should be evaluated: an assessment of the mark itself –its meaning, taking into account at this stage the relevant goods or services for registration. Rules and guidelines for identifying and analyzing the possible meanings of the mark; an assessment of additional verbal or graphic elements that may influence the mark’s meaning; changes in spelling or unusual changes in syntax and transformations of the mark’s meaning; and an assessment of the connection between the goods or services and the mark or the relevant public. During this assessment, it is important to consider the perception of the mark by the relevant target group, and to do so, it is necessary to analyze the claimed goods and services, as they serve to identify both the relevant public and its perception of the mark. The document provides information on key principles regarding the relevant target audience and the perception of the mark by this group of consumers, including certain elements that may influence the assessment; in the case of public order, the next step in the assessment is to identify reliable and objective sources on the basis of which public order can be established; in the case of public decency, the next step in the assessment is to identify the relevant core values and moral standards.

Section 2.3 examines examples of overlap between public order and good morals, that is, situations in which a restriction may concern both public order and good morals. This may concern, in particular, labels relating to human rights, illicit substances targeting particularly vulnerable groups, religion, and criminal activities or organizations. The importance of the relevant fundamental norms, principles, and values of the EU or its Member States in the context of public policy is emphasized, as is the importance of the fundamental values and moral norms of each EU society in the context of good manners.

In the area of freedom of expression (Section 2.4), it was emphasized that, according to EU case law, freedom of expression must be taken into account when analyzing whether a trademark is contrary to public policy or morality. It is noted that the impact of this principle on the assessment under Article 4(1)(f) of Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks is currently not regulated by EU trade mark law. This section refers to the Annex, which contains additional information on “potentially relevant legal sources” in the context of the application of Article 10 of the European Convention on Human Rights and Article 11 of the Charter of Fundamental Rights of the EU.

Section 2.5 provides a number of examples of marks that potentially conflict with public policy or morality, divided into groups of marks,

including: 1) prohibited substances; 2) threats to public safety; 3) religious or sacred associations; 4) vulgar elements (swear words, offensive gestures, etc.); 5) indecency, sexuality, and sexual innuendo; 6) names that discredit or defame a particular group; 7) criminal activity, crimes against humanity, racist, totalitarian, and extremist regimes, organizations, and movements; 8) well-known tragic events; 9) historical figures, national/European symbols, or highly respected individuals. It should be emphasized that the examples provided in this section do not constitute an exhaustive list of groups of terms that potentially fall within the scope of refusal of registration on the grounds that they are contrary to public policy or accepted principles of morality. The introductory part of this section explains, among other things, that the list provided does not imply that a sign cannot belong to more than one group. The section also refers to a number of objections that are typically applied to this ground for refusal, and emphasizes the need to take into account the general comments contained in paragraph 1.3 of the document, in particular the illustrative nature of this section.

Each of the thematic subsections listed above covers a range of marks and provides a non-exhaustive description of the types of marks belonging to a particular group, a set of rules related to that group, and examples illustrating those rules. Each example in this section consists of a mark, the goods or services to which it relates, the expected outcome taking into account all assumptions (i.e., whether the mark is undesirable in that it conflicts with public policy or morality), and a justification for the outcome.

General Practice CP14, together with the General Notice, was published by EUIPO on April 19, 2024. The joint communiqué with General Practice CP14 and all information about CP14 can be found at: <https://www.tmdn.org/publicwebsite/#/practices/2547782>

3. The Global Trademark Market and the Implementation of Bad Faith Standards in Ukraine

According to WIPO, in 2023 there were **88.2 million** valid trademark registrations worldwide, filed with 155 IP offices. Globally, 11.63 million trademark applications were filed, covering 15.23 million classes. The number of classes cited in applications decreased by 2% in 2023, marking the second consecutive annual decline since 2009. The largest volume of applications came from applicants in China, with a total of approximately 7.4 million domestic and foreign applications; followed by applicants from the United States (849,876), the Russian Federation (543,692), India (496,293), and Germany (441,293). The research and technology sector attracted the largest volume of applications from applicants seeking trademark protection abroad (20.1%), Fig. 2.

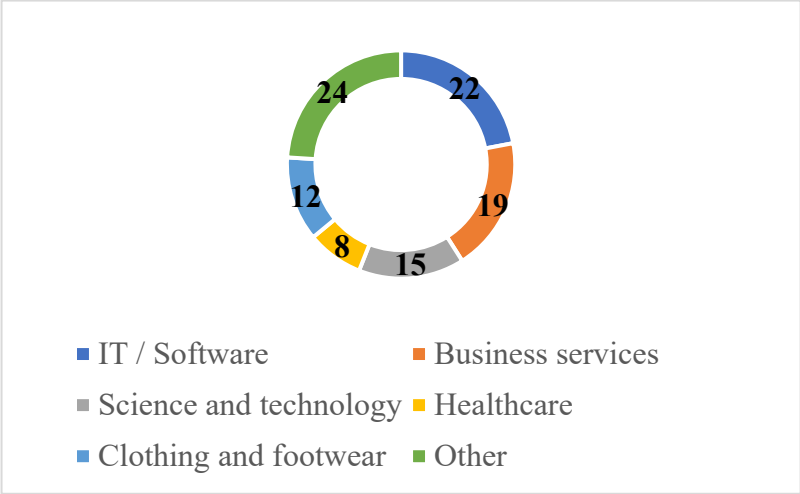


Fig. 2. Sectoral structure of international trademark applications

These are followed by the healthcare sector (13.7%), clothing and accessories (12.4%), and leisure and education (10.1%). Brands in the agriculture (10.1%), business services (9.7%), and home appliances (8.7%) sectors accounted for these respective shares of the total. However, sectors related to chemicals (3.1%), construction (5.5%), and transportation (6.6%) received the smallest share of applications abroad.

According to estimates, **88.2** million active trademark registrations were recorded in 155 IP offices worldwide, which is 6.4% more than in 2022.

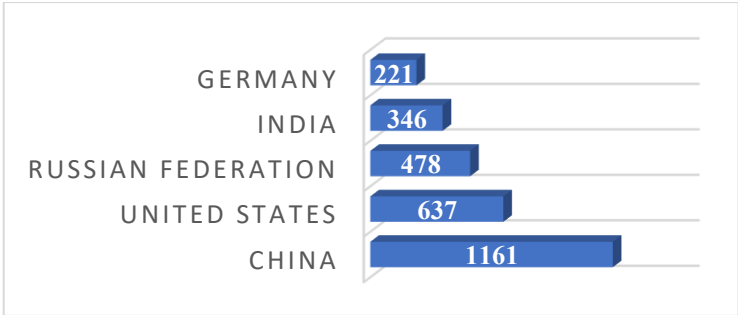


Fig. 3. Leading Countries by Number of Trademark Applications

China has the largest number of active trademark registrations – **46.1 million**. It is followed by the offices of India and the United States, each with 3.2 million registrations.¹³

After a decline in the total number of international trademark applications filed under the Madrid System for two consecutive years, 2024 saw an increase to 65,000 applications. This is 1.2% more than in 2023.

Leading countries by number of applications: 1. United States – 11,270; 2. Germany – 6,449; 3. China – 5,828; 4. France – 4,211; 5. United Kingdom – 3,736. **Ukraine ranks 24th** in this ranking among all countries worldwide – **higher than most European countries**. This is a high figure, given the aggressive war Russia is waging against our country.

The **most sought-after** class in 2024 among all applications was the one covering **computer hardware, software**, other **electrical equipment**, and **electronic apparatus** (10.8% of the total number of applications). Next in popularity are classes related to business services (8.4%) and scientific and technological services (7.8%).

In early 2026, the European Union Intellectual Property Office (EUIPO) announced that the number of applications in the EU trademark system had exceeded 3.2 million, marking a significant milestone in EUIPO's activities in 2026, which coincides with the 30th anniversary of the system. Founded in 1996 in Alicante as the Office for Harmonization in the Internal Market (OHIM), the agency became a pioneer in creating a unified intellectual property rights system covering all EU member states; in 2011, the number of applications reached 1 million; by 2019, it had doubled to 2 million, and another 1.2 million were added over the following seven years. This acceleration in growth underscores the critical importance of trademark registration for businesses seeking to gain a competitive advantage in the Single European Market, as well as the effectiveness of the centralized application procedure, which allows for coverage of 27 countries with a single application, reducing the administrative burden and legal costs for both small and medium-sized enterprises and multinational corporations. Although Germany, Italy, and Spain lead in the number of applications filed, the significant increase in applications from the United States and China confirms that the EU trademark is a global tool and the first step for international companies entering the European market.

Currently, the EUIPO processes 170,000–200,000 applications annually, providing trademark owners with a structured environment offering legal certainty, and has adapted to the registration of non-traditional marks –sound,

¹³ EUIPO Hits 3.2 Million Milestone: Celebrating 30 Years of the EU Trademark. URL: <https://analystip.com/euipo-trademark-milestone-2026-celebrating-30-years/> (date of access: 03.06.2026)

motion, and multimedia marks –alongside traditional word and figurative marks; more than 2.26 million of the 3.2 million applications filed are submitted electronically.

This digital transformation ensures that trademark and patent protection remains accessible and effective in a fast-moving economy, strengthening the EU trademark system as a cornerstone of economic stability and innovation at the start of its fourth decade”.¹⁴

The following indicators demonstrate the effectiveness of Ukraine’s digital market for electronic services. According to data from the State Tax Service of Ukraine, *in the first four months of 2026, non-resident companies providing e-services to Ukrainian users paid over 6.9 billion UAH in “Google tax” to the state budget. In absolute terms, this amounts to 52 million euros; \$97.6 million. Compared to the same period in 2025, revenues increased by 1.5 billion UAH. The taxpayers are companies providing services in the fields of online advertising, streaming platforms, applications, online games, and marketplaces.*

Under the law, a foreign company must register as a VAT payer in Ukraine if, over the past 12 months, the volume of its e-services for Ukrainian users exceeded the equivalent of 1 million UAH.

Among the largest taxpayers are: Apple, Google, Meta, Netflix, Sony, Valve, Etsy, Epic Games, and Wargaming. Since the beginning of the year, nine more non-resident companies have registered as VAT payers in Ukraine. Currently, 154 international companies are already paying the “Google tax” in Ukraine[14].¹⁵

Business Activity and Trademarks in Ukraine. Every year, approximately 20,000 trademark registration applications are filed in Ukraine. Trademarks play a key role in the development and promotion of businesses, allowing consumers to distinguish their goods and services in the market. On average, the trademark registration process in Ukraine takes between 16 and 24 months. However, this lengthy period does not affect the use of the mark, as the term of exclusive rights begins on the date of filing the application. The IP Office provides businesses and other users with information about trademarks that have been granted legal protection in Ukraine. Electronic filing allows trademark owners to submit applications online. In 2024, Ukraine received **23,817** trademark registration applications. The number of applications from foreign applicants increased to 2,843, while the number from domestic applicants decreased slightly to 20,974.

¹⁴ Apple, Google і Meta сплатили Україні понад 6,9 млрд грн податків. URL: <https://yur-gazeta.com/golovna/apple-google-i-meta-splatili-ukrayini-ponad-69-mlrd-grn-podatktiv.html> (дата звернення: 03.06.2026)

¹⁵ Global Brand Database. URL: <https://branddb.wipo.int/> (date of access: 03.06.2026)

According to an analysis of the annual reports of the Antimonopoly Committee of Ukraine , **90–92% of instances of unfair competition in Ukraine involve violations related to means of individualization**: Article 4 (unlawful use of designations) and Article 15-1 (dissemination of misleading information)of the Law of Ukraine “On Protection Against Unfair Competition.”

Currently, the WIPO Global Brand Database contains over 64,045,382 records from 76 national and international registries and serves as the first step in searching for an existing mark that is similar or identical to yours. The database assists in searching for trademark registrations, brand monitoring and enforcement activities, identifying potential conflicts, monitoring registration applications, and taking the necessary legal actions to protect IP rights from unfair competition.

Users can consult the database before filing a trademark registration application or at any other time to track trademarks in the markets of interest to them. Digital technologies have opened up new opportunities for simplifying registration procedures, commercialization, and the circulation of intangible assets in the digital space.

Implementation and Practice of “Bad Faith” in Ukraine. In Ukraine, the concept of bad faith has evolved from isolated court decisions to clear legislative codification and administrative procedures thanks to European integration reforms.

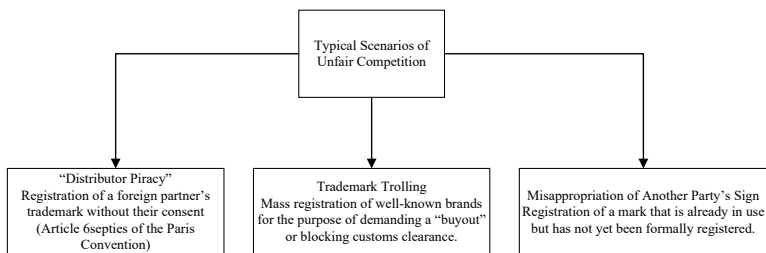
Legal Framework. Under the Law of Ukraine “On the Protection of Rights to Marks for Goods and Services” (as amended), bad faith is established as an absolute ground for declaring a trademark invalid:

A trademark registration may be declared invalid in whole or in part by a court or the Board of Appeals if “the trademark application was filed in violation of the rights of others or with bad faith (bad faith on the part of the applicant), as determined by a court or the Board of Appeals.”

Features of Ukrainian Judicial Practice

Ukrainian courts (in particular, the Commercial Court of Cassation within the Supreme Court) are actively adopting the approaches of the CJEU, adapting them through the lens of Article 13 of the Civil Code of Ukraine (limits on the exercise of civil rights, prohibition of abuse of rights) and the Law of Ukraine “On Protection Against Unfair Competition.”

Three most typical scenarios of *bad faith* have emerged in national practice:



Standards of proof in Ukraine. Unlike many European countries, where bad faith is exclusively an evaluative category of intent, Ukrainian judicial practice has developed a clear list of markers that the plaintiff must prove in their entirety:

1. **Applicant's Awareness:** Proving that, as of the filing date, the defendant was fully aware of another party's use of the mark (evidence of prior negotiations, joint projects, executed contracts, etc.).
2. **Intent:** The defendant's actions following registration. If the defendant immediately sends claims demanding the cessation of the trademark's use or offers to purchase it at an inflated price, the courts interpret this as a classic manifestation of bad faith.
3. **Priority of use:** The plaintiff must demonstrate long-term, consistent, and well-known use of the mark by consumers prior to the date the defendant filed the application.

Administrative Remedies through the Board of Appeals. One of the most significant changes in the implementation of EU requirements was granting the Appeals Chamber of UKRNOIVI (the IP Office) the authority to review applications for declaring a trademark invalid on grounds of bad faith within the framework of *post-registration procedures*.

Advantages of the administrative procedure over the judicial one: Speed: The time required to process an application before the Board of Appeal is significantly shorter than the full cycle of a three-tier court proceeding. Expertise: Cases are reviewed by highly specialized experts in the field of intellectual property who are familiar with EUIPO methodology. However, the courts remain the final arbiter, as any decision by the Board of Appeal may be appealed to a court.

Overall, Ukrainian practice has almost completely aligned with the European approach to assessing *bad faith*. The main difference today lies in the level of detail required in the evidence: European institutions rely more on standards of good-faith business conduct and commercial logic, whereas Ukrainian courts require hard evidence of prior knowledge and abuse on the part of the defendant.

Comparison Table: Approaches to Bad Faith

Assessment criterion	EU Practice (EUIPO / CJEU)	Ukrainian Practice (Courts / UKRNOIIV)
Main focus	The applicant’s subjective intent at the time of filing the application (good faith).	A combination of subjective intent and objective actions (abuse of rights, unfair competition).
Time frame	Exclusively the situation as of the filing date (subsequent actions – only as circumstantial evidence).	Both the situation at the time of filing and subsequent conduct (sending claims, blocking business) are evaluated.
Evergreening (Re-filing of applications)	Recognized as bad faith (Hasbro/Monopoly case) if the goal is to circumvent the requirement for use.	Under development. National practice is only beginning to address the systemic issue of “perpetual” trademark re-filing.
Burden of proof	Rests entirely with the party seeking trademark cancellation. Presumption of good faith.	Lies with the plaintiff. Requires a substantial amount of evidence of actual use of the mark prior to the filing date.

New Earlier TM search capabilities for applicants in EUTM Filing when filing an EU trademark. Currently, when filing an application through the EUTM Filing service, applicants can use the Earlier TM application to verify whether the desired designation is already registered in the EU as a European Union Trade Mark (EUTM). Applicants can search for identical or similar EU trademarks free of charge using the TMview search tool <https://www.tmdn.org/tmview/#/tmview>.

This is an important development, as trademark registration in the EU is based on a first-to-file principle without substantive examination, and most oppositions to trademark applications come from owners of other registered trademarks. Applicants can thus save time and money by searching for already registered trademarks that may conflict with the desired mark before filing an application. There are also other grounds on which trademark applications may be opposed (for example, well-known trademarks that are not registered). It is worth remembering that in most cases, a problem will arise only if there is a connection between the goods and services you offer and those protected by a potentially conflicting trademark (these may be either identical or related goods or services).

As noted by O.P. Orlyuk, head of the Ukrainian National Office of Intellectual Property and Innovation: “...it is important to take foreign experience into account to avoid the mistakes made by other countries. For example, it has been agreed that Ukraine will implement the European trademark registration procedure based on absolute grounds even before joining the EU. This is a strategic step that will allow Ukrainian businesses to adapt to European rules and practices, as well as avoid the problems faced by

countries that joined the EU without prior preparation –it was quite difficult for them to cope with the flood of European trademarks entering their national markets. The transition to the new system means not only simplifying the registration procedure but also significantly reducing registration times –we will be able to meet the deadlines that apply in the EU. And that is exactly what our businesses need right now.”¹⁶

EU4IP Project: A large-scale technical cooperation initiative has been launched with the participation of the European Commission and EUIPO. The project aims to integrate Ukrainian trademark databases into pan-European search tools (such as TMview), enhance the qualifications of experts, and prepare for Ukraine’s future integration into the unified EU Trademark (EUTM) system.

CONCLUSIONS

The conducted research provides grounds to assert that the doctrine of bad faith in EU trademark law has evolved from a fragmented category of judicial practice into a comprehensive legal mechanism for countering abuses of the system of legal protection of designations. The CP13 General Practice became the first systematic document of the EUIPO to synthesize the approaches of the Court of Justice of the European Union (CJEU), national intellectual property offices, and the practice of the EUIPO regarding the criteria for establishing bad faith in trademark applications.

The article establishes that the modern concept of bad faith in EU law is based on two fundamental models: the unlawful appropriation of third-party rights and the abuse of the trademark system itself. Unlike the traditional approach, which associated bad faith primarily with copying others’ marks, current EUIPO practice covers a much broader range of scenarios: parasitic behavior, breach of trust, evergreening, defensive registrations, speculative filings, and blocking competitors’ market entry. The structural model of bad faith proposed by the authors allows for the systematization of these scenarios, the criteria for their assessment, and the legal consequences within the EU system, and can serve as a methodological basis for harmonizing Ukrainian practice with EU law.

It has been established that the key element in assessing bad faith in the practice of the CJEU and EUIPO is not the formal similarity of the signs, but rather an analysis of the applicant’s intent at the time of filing the application. In this context, criteria such as awareness of third-party rights, the absence of honest commercial logic, the chronology of events, the applicant’s pattern of behavior, and the likelihood of gaining an unfair competitive advantage take on particular significance. The case law in Lindt, SkyKick, MONOPOLY, and

¹⁶ Орлюк О. Європейські колеги високо оцінюють прогрес України у сфері ІР. URL: <https://jur-gazeta.com/interview/evropeyski-kolegi-visoko-ocinyuyut-progres-ukrayini-u-sferi-ir.html> (дата звернення: 03.06.2026).

DoggiS demonstrates a shift from a narrow formal analysis () to a comprehensive assessment of the economic and behavioral nature of the applicant's actions.

The study showed that General Practice CP14 significantly expands the functional purpose of the EU trademark system, extending it not only to the protection of the private interests of rights holders but also to the protection of fundamental societal values, public order, and generally accepted moral principles. The document establishes a unified approach to evaluating designations that may conflict with public interests, religious, cultural, or ethical norms, and also takes into account the balance between the protection of morality and freedom of expression.

An analysis of the global trademark market confirms that the rapid growth in the number of applications, the digitization of registration procedures, the development of e-commerce, and the cross-border digital environment objectively increase the risks of bad-faith registrations. In this context, a trademark is becoming not only a means of distinguishing goods and services but also a strategic intangible asset capable of providing competitive advantages, market influence, and control over digital communication channels. At the same time, the trademark system is increasingly being used as a tool for unfair competition, market blocking, parasitizing on business reputation, and creating artificial barriers for competitors.

For Ukraine, the implementation of the CP13 and CP14 approaches has not only legal but also strategic significance in the context of European integration and the harmonization of national legislation with the EU acquis. It has been established that Ukrainian practice is gradually adapting the approaches of the CJEU and EUIPO through judicial review mechanisms, the provisions of Article 13 of the Civil Code of Ukraine, legislation on unfair competition, and the activities of the Appeals Chamber of UKRNOIVI. At the same time, the Ukrainian model has its own specific features related to the heightened importance of proving the applicant's knowledge, prior contractual or other contractual relations, actual use of the mark, and subsequent conduct following registration.

It is argued that the further development of the Ukrainian trademark protection system requires not only the formal adoption of European approaches but also the creation of its own methodological guidelines for assessing bad faith, taking into account the practice of the EUIPO, the CJEU, and national case law. It is also advisable to clarify the criteria for bad faith in the rules for examining applications and in administrative dispute resolution procedures.

SUMMARY

In today's digital economy, the problem of bad faith is taking on new forms related to automated brand monitoring, mass filing of applications, digital trademark squatting, and the use of algorithmic market analysis

systems and artificial intelligence to identify commercially promising designations. This poses new challenges for the trademark legal protection system and requires the further development of mechanisms to detect and prevent bad-faith practices at the international level.

Therefore, the implementation of European standards for assessing bad faith is a necessary condition for the formation in Ukraine of a modern, transparent, and predictable system of intellectual property rights protection capable of ensuring a balance between the protection of bona fide businesses, freedom of competition, and the effective functioning of the digital economy.

Key words: bad faith, trademark law, EUIPO, CP13, CP14, European Union trademark, unfair competition, trademark registration, applicant's intent, intellectual property rights.

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