

Well-known facts

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EUIPO Guidelines 2023 (page 36)

” The Office can use facts that are a matter of common knowledge as a basis for its reasoning. Well-known facts are those that are ***likely to be known by anyone*** or that ***may be learnt from generally accessible sources.***”

Question of evidence: ”The Office is not required to prove the accuracy of these well-known facts and, therefore, it is not obliged to give examples of such practical experience; it is up to the party concerned to submit evidence to refute it.”

Version of 01.02.2017 of Guidelines: ”However, the Office’s ex officio examination is restricted to well-known facts, that is to say, ‘facts that are already well known or which may be learned from generally accessible sources’, which excludes facts of a highly technical nature”.

What is a well-known fact

“(…) facts which are well known, that is, which are ***likely to be known by anyone*** or ***which may be learnt from generally accessible sources***”. (Judgment of 22 June 2004, Ruiz-Picasso e.a. / OHMI - DaimlerChrysler (PICARO), T-185/02, EU:T:2004:189, p. 29 (PICASSO is (...) the name of a famous painter)

“A well-known fact is one that is ***sufficiently known to be true so that it is not necessary to prove it***” (Judgment of July 2023, Mood Media Netherlands / EUIPO - Tailoradio (VIDEO MOOD Digital Signage, made easy), T-664/22, EU:T:2023:431, point 53, quoting judgment of 16 February 2017, Antrax It v EUIPO – Vasco Group (Thermosiphons for radiators for heating), T-828/14 and T-829/14, EU:T:2017:87, paragraph 90) (music affects emotions, boosts happiness and reduces anxiety)

What is a well-known fact

“well-known facts, i.e. facts which are likely to be known to any person (...) or which may be known from generally accessible sources or **which result from generally acquired practical experience of the marketing of widely consumed products, which facts are likely to be known to any person and are known in particular to the consumers of those products.**” (Judgment of 8 October 2015, Benediktinerabtei St. Bonifaz / OHMI - Andechser Molkerei Scheitz (Genuß für Leib & Seele KLOSTER Andechs SEIT 1455), T-78/14, EU:T:2015:768, points 26, 27 – the consumer is used to often seeing representations or names of monks or abbeys, not only for dairy products, but also for spirits)

“**Well-known facts from generally accessible sources include information from standard dictionaries.** (...) well-known facts, namely the meaning of the words ‘beauty’ and ‘bio’ in the online version of the Oxford English Dictionary.” (Judgment of 7 February 2024, Beauty Biosciences / EUIPO - Société de Recherche Cosmétique (BEAUTYBIO) T-80/23, ECLI:EU:T:2024:58, points 22, 26)

Procedure

- the bodies of EUIPO may base their decisions on well-known facts which have not been relied on before it, **without having to establish their accuracy;**
- in order to challenge a well-known fact and thus oblige EUIPO to provide evidence in response to that challenge, the applicant **must do so in a detailed manner;**
- The EUIPO is also authorised to provide **before the General Court evidence in order** to establish the exactitude of the said fact.

(judgments of 10 September 2019, *Oakley v EUIPO – Xuebo Ye (Representation of a discontinuous ellipse)*, T-744/18, not published, EU:T:2019:568, paragraphs 57, 58, 63, and of 18 January 2023, *YAplus DBA Yoga Alliance / EUIPO - Vidyanand (YOGA ALLIANCE INDIA INTERNATIONAL)*, T-443/21, EU:T:2021:7, points 25, 26)

- in the field of correcting and sun glasses, footwear and bags, simple figurative elements are used on products not as decorative elements, but as trademarks (T-744/18, p. 59)
- there was a multiplicity of associations in the field of yoga (T-443/21, p. 22)
- a vacuum cleaner, in a certain configuration, may be used as a compressor (Judgment of 10 November 2011, *LG Electronics/OHMI*, C-88/11 P, EU:C:2011:727, points 29, 30)

Examples of well known facts

- **“gels for use in cosmetic surgery and medical cosmetic treatment are usually injected”** (Judgment of 13 July 2022, Purasac / EUIPO - Prollenium Medical Technologies (Rejeunesse), T-543/21, EU:T:2022:445, point 27)
- **« € » and « \$ » are currently used to designate currencies** (Judgment of 16 December 2020, Cinkciarz.pl / EUIPO (€\$), EU:T:2020:631, T-665/19, points 64, 65)
- **‘mobile phones’ and ‘portable communication devices’ are small portable computers that enable their users, inter alia, to access the internet** (Judgment of 18 November 2020, LG Electronics / EUIPO - Staszewski (K7), EU:T:2020:550, T-21/20, point 53)
- **the price of batteries, in particular for hybrid and electric vehicles, is considerable** (judgment of 26 avril 2023, Volkswagen / EUIPO - XTG (XTG), T-153/22, EU:T:2023:217, point 24)
- according to the Board of Appeals, **in the Scandinavian countries, the Netherlands, Finland and Cyprus [the] basic understanding of English by the general public is a well-known fact** (Judgment of 19 January 2022, Estetica Group Iwona Michalak / EUIPO (PURE BEAUTY), T-270/21, EU:T:2022:12, point 7)

Examples of well known facts

- **«max» is a shortened version of «maximum» in English** (Judgment of 9 March 2017, Maximum Play / EUIPO (MAXPLAY), T-400/16, EU:T:2017:152, point 32)
- **«turbo» is a shortened version of a turbo engine** (Judgment of 11 July 2019, Hauzenberger / EUIPO (TurboPerformance), EU:T:2019:495, T-349/18, point 18)
- **liqueurs such as pastis de Marseille, absinthe, Grand Marnier or Cointreau have an alcoholic strength by volume equivalent to that of simple spirits such as vodka, rum or whiskey** (Judgment of 28 April 2021, West End Drinks / EUIPO - Pernod Ricard (The King of SOHO), T-31/20, EU:T:2021:217, point 66)
- **the French consumers do not follow American football teams** (Judgment of 1 February 2023, NFL Properties Europe / EUIPO - Groupe Duval (DUUUVAL), T-671/21, EU:T:2023:33, point 54)

Not well known

- **the applicant cannot argue that it is «well-know» that the Italian Patents and Trademarks offices provides a lower control [in comparison to the EUIPO]** (Judgment of 19 April 2016, 100 % Capri Italia / EUIPO - IN.PRO.DI (100 % Capri), T-198/14, EU:T:2016:222, point 78)
- **the applicant cannot successfully claim that the Board of Appeal erred as to the facts in having found that the ending ‘ello’ had no meaning whereas in Italian it had a well-known, namely a diminutive meaning** (Judgment of 10 November 2021, Phi Group / EUIPO - Gruppo Cadore (REDELLO), T-532/20, EU:T:2021,774, point 58)

Other examples of well known facts

- **“cheese (...) must normally be refrigerated, which is not the case with nuts covered by the mark applied for. (...)”** (Judgment of 17 April 2024, Yadex International / EUIPO - Armada Gida (doyum), T-209/23, EU:T:2024:251, point 35) (public pertinent: DE)
- **yerba mate contains caffeine** (Order of 26 February 2024, Thomas Henry / EUIPO - Shanghai Chengzhi Enterprise Service Center (MATE MATE), T-505/23, point 48) (public pertinent: ES and DE)
- **the term «bahia» is the name of one of the federated States of Brasil** (Judgment of 10 January 2024, Levantur / EUIPO - Fantasia Hotels & Resorts (LUXURY BAHIA PRINCIPE FANTASIA Don Pablo Collection) T-505/22, EU:T:2024:3, point 103) (public pertinent: ES and BE)
- **the expression “because there is no planet B” has been used as a slogan during demonstrations against climate change** (Judgment of 13 September 2023, Ecoalf Recycled Fabrics / EUIPO (BECAUSE THERE IS NO PLANET B), T-324/22, EU:T:2023:536, point 41) (public pertinent: EN speaking)

Other fields of EU Law

“the Council did not in this instance have to communicate to the applicant the documentary evidence on which that statement of reasons was based, since that evidence, which related to the financial services specifically provided to the Government of Iran by the applicant, as the central bank of the Islamic Republic of Iran, could ***be presumed to be known to all*** and to be implicitly included in the statement of reasons for the contested acts so far as concerns the criterion of support to the Government of Iran” (Judgment of 25 March 2015, Central Bank of Iran / Council, T-563/12, EU:T:2015:187, point 97, emphasis added).

it is a well-known fact that the expression ‘oil for food’ refers to the programme which had been instituted by the United Nations Organisation between 1996 and 2003 for the benefit of Iraq (Judgment of 8 mars 2023, Assaad / Conseil, T-426/21, EU:T:2023, 114 point 155).

Other fields of EU law

“The organisation and operational structures of the EU industries, including the bed-linen industry, **cannot** be regarded as well-known facts, which are **likely to be known by anyone, or facts from generally available sources**” (Judgment of 15 December 2016, Gul Ahmed Textile Mills / Conseil, T-199/04 RENV, ECLI:EU:T:2016:740, point 109, emphasis added)

“It is a matter of common knowledge that, well before 1 July 1998 (...) the economic system prevailing in China was already no longer that of a state-trading country” (Judgment of 28 February 2018, Commission / Xinyi PV Products (Anhui) Holdings, C-301/16 P, ECLI:EU:C:2018:132, point 78).

“in order to establish the relevant facts, the Court may also rely on matters of common knowledge. Justice is often depicted as being blind. However, at least in my recollection, that allegory is not meant to be interpreted as Justice being unable to see something that is blindingly obvious to everyone else” (Opinion of advocate general Bobek delivered on 6 October 2021, Nord Stream 2 AG v European Parliament, Council of the European Union, C-348/20 P, point 198)

Thank you