jingle bells, jingle bells

A deep dive into sound marks...

all the way!

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According to article 2.IBCIP sounds may constitute a trademark. A sound mark can be a sound or a tune.

The criteria for assessing the distinctiveness of a trademark are the same for all categories of trademarks.

Thus, the criteria for assessing the distinctive character of sound marks are no different from those applicable to other categories of marks.

A sound mark is considered distinctive if it has a certain resonance which enables the target consumer to perceive and regard it as a trademark.

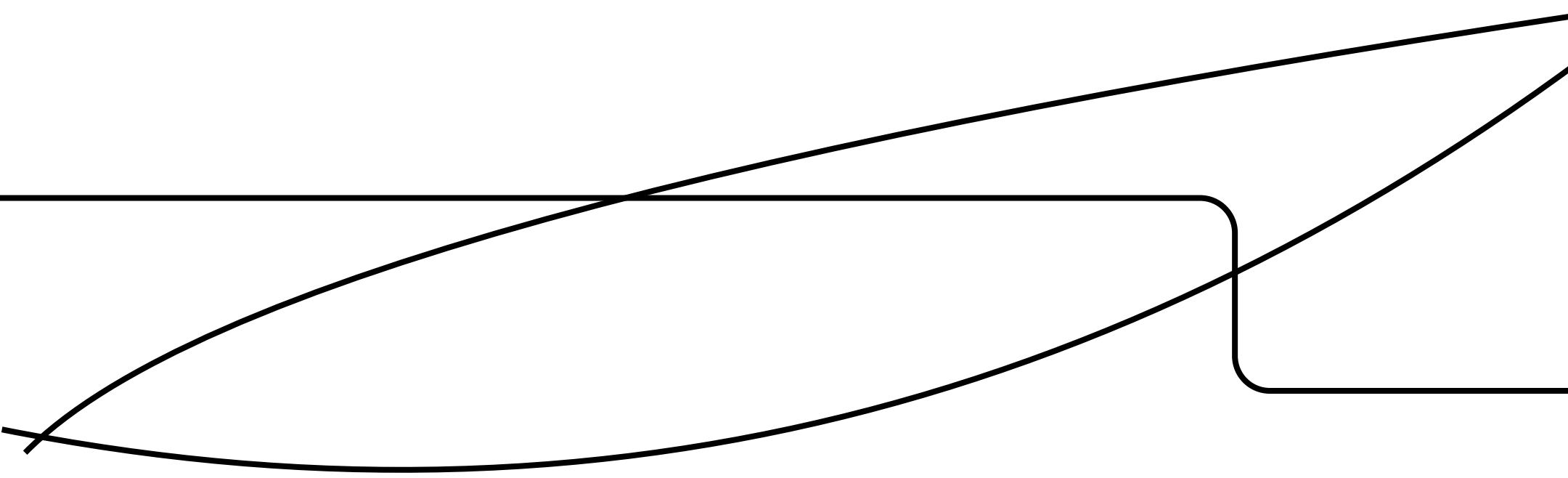
The established case law on 3D marks, according to which only a mark that significantly deviates from the norm or from what is customary in the sector has distinctive character, does not apply to sound marks.

When a sound is purely technical or functional, it is not distinctive. Think of the sound produced when opening a can or bottle followed by a fizzing sound for beverages and beverage containers.

The duration of a sound mark, as well as its claimed ‘simplicity’ or ‘banality’ are not, on their own, sufficient grounds to conclude that a sound lacks distinctive character.
Customs in the sector and characteristics of the sound mark as a short striking jingle are relevant to the assessment of the distinctiveness. Recently a short jingle of Berlin’s public transport operator was found distinctive for transportation services.

You can apply for a sound mark by filing an audio file or by means of a stave. A mere description of the sound in words will not be sufficient.

Think of the Dutch onomatopoeia ‘**Kukelekuuuuu**’ to transcribe a cockcrow for example.



Conditions for the audio file are:

Maximum file size: 2MB

Accepted format: MP3

Sampling rate: 8 kHz for voice only, 11.025 kHz for sound effects, 22.05 kHz or 44.1 kHz for music

Channels: 1=Mono; 2=Stereo.

Relevant Case law

CJEU, 27 November 2003, C-283/01 Shieldmark (Für Elise)

EGC 10 September 2025, T-288/24, Berliner Verkehrsbetriebe (BVG) (jingle)

EGC 7 July 2021, T-668/19, Ardagh Metal Beverage Holdings (sound of opening a can)

EGC 13 September 2016, T-408/15, Globo Communicação Paricipações (ringtone)

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