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Slovenian Intellectual Property Office registers first sound mark National procedures

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The **Slovenian Intellectual Property Office** (SIPO) has registered a sound mark for the first time (Decision 31207-360/2006-8, June 19 2007).

On March 7 2006 PDV Posredovanje delovne sile doo applied for the registration of a sound mark. The mark was represented graphically as a sequence of three notes on a musical staff with a syllable below each note (POW-ER-SERV). The trademark covered various services in Classes 35, 37, 38, 41 and 42 of the **Nice Classification**. SIPO found that the mark:

- was not devoid of distinctive character;
- was capable of distinguishing the services of one undertaking from those of another; and
- most importantly, was represented graphically in an appropriate manner.

The mark thus proceeded to publication. No opposition based on relative or absolute grounds was filed and the mark was registered.

SIPO seems to have followed the case law of the **Office for Harmonization in the Internal Market**, under which sound marks represented graphically on a musical staff may be registered. Since it is the first time that SIPO has registered a sound mark, it has introduced certain procedural and administrative novelties: applicants may submit a sample of the sound mark in an appropriate electronic format (eg, MP3), but are not obliged to do so. All samples will be available in the SIPO database, so that any interested party may listen to the samples. In the case at hand PDV provided no sample. Importantly, if a sound mark also consists of words (POW-ER-SERV in this case), these must be available in the database.

How the scope of protection of sound marks will be interpreted in future opposition or infringement cases remains to be seen. In particular, it will be interesting to see how the similarity between sounds will be established and, if a sound mark includes words, whether these words will be protected regardless of the musical component of the mark.

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