

GREEN MARKS AND LOCAL ECONOMIC DEVELOPMENT

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ABSTRACT

Both municipalities and local entrepreneurs can take advantage of ‘green marks’ (or ‘environmental’ marks). European citizens are increasingly interested in purchasing environmentally friendly goods or services. Protection of the environment is also of crucial importance for cities and local entrepreneurs. Both municipalities and local entrepreneurs should consciously take advantage of various types of ‘green’ guarantee signs or ‘quality’ signs. Firstly, signs supervised by the European Union – like the ‘ecolabel’, EU organic production logo or EMAS – should be distinguished. ‘Green’ marks could be also created and registered as guarantee (certification) marks by municipalities or entrepreneurs themselves. The aim of the article is to present a way to protect ‘green marks’. It was necessary to ask certain questions: Is the protection of individual trade marks dedicated to designations of quality? What kind of signs are protected as a common mark or certification mark? What is the role of green guarantee marks? The basic research method for this article was analysis of EU law and practice in the protection of green marks.

KEYWORDS

green marks, local economic development, guarantee marks, certification marks

1. INTRODUCTION

Protection of the wellbeing of natural environment is one of the objectives of EU policy¹ as well as a crucial factor in urban planning or economic development in various areas, including cities. This is important in the context of compliance with the obligations incumbent on EU Member States and their local government units. This being said, labelling could politicise products² and services.

1 J Belson, *Certification and Collective Marks: Law and Practice* (Edward Elgar Publishing 2017).

2 M Micheletti, *Political Virtue and Shopping: Individuals, Consumerism and Collective Action* (Palgrave Macmillan 2003) 89–99.

The quality or composition of the products or the way in which a particular service is rendered is becoming more and more important for European citizens. 'Surrounded by organic, non-GMO, fair trade, low carbon footprint, dolphin-friendly, energy-efficient product messages, our purchasing choices have become morally and ethically complex'³. For example, European citizens themselves are increasingly interested in purchasing environmentally friendly goods or services. This can be an incentive for tourists, urging them to use a locally offered service or to purchase a product bearing a location-specific quality mark.

Urban and urban/rural communes are also involved in developing solutions to implement the principle of sustainable development, and they may be beneficiaries of various competitions or rankings to promote environmental protection⁴. This kind of competition could also serve as marketing for cities and for local entrepreneurs. It might be also a possibility to create a kind of 'green mark' that helps to identify a territory with specific characteristics.

Therefore, both municipalities and local entrepreneurs should consciously take advantage of various types of 'green guarantee signs', the use of which is supervised by the European Union; they should also create their own marks, which can be protected as guarantee (certification) marks.

2. HOW TO DEVELOP LOCAL ECONOMIES WITH INTELLECTUAL PROPERTY RIGHTS (FOR EXAMPLE, 'GREEN' TRADE MARKS)?

There are some tools to develop local economies, including effective intellectual property. Intellectual property can strengthen competitiveness. Local economic development can be optimised by intellectual property as well. Good management of IP could be a part of economic assets which are also important in local development. Local trade marks (or other local brands) could be effectively used by local government units. Local marks (especially some 'quality' trade marks like 'green' trade marks) are a kind of tool to stimulate demand. Such signs could create positive images and communicate certain product attributes. Thanks to these signs, potential buyers can learn more about the branded good or service.

Concerning the role of intellectual property for local economic development, local government could stimulate the development of intellectual property assets. This applies to local entrepreneurs as well. This kind of asset has tremendous economic value. For example, trade marks could be licensed. Urban and urban/rural communities, and some local entrepreneurs, can receive additional revenue from licensing their trade mark.

To create different 'green' local marks it is important to focus on the potential of the locality. This could be a local food or local tourism. Consumers are looking for added value and some differentiation in the tourism market. This is one of the factors behind the birth of ecological tourism that has been observed over the last decade. Ecotourism, agrotourism or therapeutic tourism have caused the need to create some labels. For local communities, it is also a way to differentiate themselves from other cities, countries and regions. There are examples of regions or towns that use signs (registered as trade marks) to differentiate themselves from other regions or towns, such as the New York City logo. Nevertheless, it is not a 'green' trade mark. Perhaps in the near future this kind of sign will be more popular.

3 L Miller, 'Ethical Consumption and the Internal Market' in D Leczykiewicz, S Weatherill (ed), *The Images of the Consumer in EU Law Legislation, Free Movement and Competition Law* (Hart Publishing 2016) 279–304.

4 See e.g. the 'Eco Miasto' competition that has been held each year for 7 years by the French Embassy in Poland, among others. More information was available at 'O projekcie' [About project], <<http://www.eco-miasto.pl/o-projekcie/>> accessed 12 Feb 2023, though the website is no longer available.

Large and small localities should act to implement sustainable development principles. From time to time, they do so in cooperation with local businesses. This stimulates local economic development. The actual system of protection of different trade marks could be very helpful in creating an interesting form of cooperation between the local government and local business.

Even if local governments and/or local entrepreneurs have not yet created their own 'green' marks, they could use some 'quality' marks that have been created by the European Union (such as the EU organic logo or ECOLABEL). If they create their own 'green' marks these could be registered as certification marks or guarantee marks. This paper does not characterise geographical indications protected by the European Union legal regime, such as protected geographical indication, protected designation of origin or traditional speciality guaranteed. However, they could also be quite useful in supporting marketing strategies of municipalities and local entrepreneurs. In some regions (like in the region of Bordeaux) it is a key tool in marketing.

3. EU 'GREEN' MARKS

The history of labelling is long. It is very important in the consumer protection discourse of the EU⁵. The system of labelling covered by European Union law creates a kind of 'mechanism for the protection of consumer's ethical interests'⁶ and economic interests as well. It was very important also for internal market policy. That is why some European Union marks were created a long time ago. Among the marks established by the EU to indicate certain characteristics of products or services related to its environmental protection policy, the following should be distinguished: the EU organic production logo, the 'ecolabel' and EMAS.

a) EU organic production logo

The EU organic production logo was established in 1991 by Council Regulation (EEC) No. 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs. This logo was created because of the rising demand on the market for organically produced agricultural products and foodstuffs. This sign signals to purchasers that the products have been produced organically.

The new symbol of the EU organic production logo was introduced by Commission Regulation (EU) No. 271/2010 of 24 March 2010 amending Regulation (EC) No. 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) No. 834/2007, as regards the organic production logo of the European Union⁷. The symbol currently in force was selected as part of a competition organised by the European Commission (Recital 5 Regulation 271/2010). Thus, the EU organic production logo was changed. Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No. 834/2007⁸ provides rules for using the organic production logo of the European Union on the territory of European Union Member States.

5 L Miller 294.

6 Ibid. 298.

7 Commission Regulation 271/2010 of 24 March 2010 Regulation 2010/271 – Amendment of Regulation (EC) No 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007, as regards the organic production logo of the EU [2010] OJ L 84/19.

8 Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 [2018] OJ L 150/1.

The manner of using the EU organic logo is described in Annex V to Regulation 2018/848. The symbol that can be used to distinguish some ecological products is also shown in Annex V. Designers creating an industrial model of packaging must not interfere with the appearance of the EU labelling of an organic product. The European Union legislature allows the use of this symbol in black and white, but only where the use of the colour version is impossible. When designing an industrial design for food product packaging that contains the organic production logo, the logo being placed should have certain dimensions imposed by the European Union legislature.

b) ECOLABEL

Another 'green mark' is the EU Ecolabel. 'Ecolabels ... are generally part of retailers' supply chain management and corporate social responsibility schemes'⁹. The EU Ecolabel is a mark given to products that meet higher environmental standards. It is broadly known as the 'European flower'. This mark was established in 1992¹⁰. Currently, the legal basis for awarding the label is Regulation (EC) No. 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel¹¹. The EU Ecolabel criteria are based on the eco-efficiency of the products to be marked and take into account the latest EU strategic goals for the environment. They define the environmental requirements to be met by a product in order to bear this marking (Article 6 (2) Regulation 66/2010). The form of the EU Ecolabel is presented in Annex II to Regulation 66/2010 and must not be changed. This label can be applied not only to food products, but also in the tourism sector¹². This option is currently used by many European hotel service providers¹³.

In recent years the European Union 'has focused on environmental labelling, however, because of the spectacular development of ecolabels'¹⁴. The success of this 'green mark' is very visible. The number of licences issued has gradually increased since 1992, thanks to the fact that the majority of EU citizens 'are willing to pay more for products if they were produced under certain social and environmental standards'¹⁵.

c) EMAS

The Eco-Management and Audit Scheme (EMAS) is an example of an 'environmental' mark that is directly related to the very activities of various organisations (of both economic operators and non-profit institutions). This mark confirms that the organisation concerned has met the most

9 O De Schutter (ed), *Trade in the Service of Sustainable Development: Linking Trade to Labour Rights and Environmental Standards* (Bloomsbury Publishing 2015) 127.

10 The Ecolabel as an ecological mark was introduced by Council Regulation (EC) 880/92 of 23 March 1992 on a Community eco-label award scheme on a Community [1992] OJ L 99/1. Later on, this regulation was replaced by Regulation (EC) 1980/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community eco-label award scheme [2000] OJ L 237/1. For more on the historical aspects of the functioning of the ecological label, see N Valderyron, 'Sécurité alimentaire' in C Bluman (ed), *Politique Agricole commune et politique commune de la pêche* (Éditions de l'Université de Bruxelles 2011) 356.

11 Regulation (EC) 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (Text with EEA relevance) [2010] OJ L 27/1.

12 'Ecolabel for ecofriendly tourist accommodation', available at <<http://ec.europa.eu/ecat/hotels-campsites/en>> accessed 8 Feb 2023.

13 For a list of hotels that use the mark of 'ecolabel', see <<http://ec.europa.eu/ecat/hotels/en/lista>> accessed 8 Feb 2023.

14 O De Schutter (ed) 124.

15 Ibid. 151.

stringent environmental requirements¹⁶. The EMAS is also an environmental management system and an audit programme for various types of organisations¹⁷. It is governed by Regulation (EC) No. 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No. 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC¹⁸.

During the years-long operation of the EMAS system, its positive aspects have been identified¹⁹. It has been noted that this instrument can increase the efficiency of the use of resources, which has a significant impact on the environment²⁰. It is also a tool which can be used to improve the effects of environmental activities (Recital 8 Regulation 1221/2009). This logo can be ‘an appealing communication and marketing tool’ (Recital 15 Regulation 1221/2009). It is an instrument for nurturing a culture of sustainable development and efficient management of available resources and energy in organisations, whilst offering the prestige of being a company that operates in accordance with the idea of sustainable development²¹.

The EMAS logo is defined in Annex V to Regulation 1221/2009. Apart from the graphic mark, a verbal mark should be used: ‘EMAS Verified environmental management’. According to Annex V Paragraph 2 Regulation 1221/2009, the logo may be used either in three colours, in black, in white, or in greyscale.

The logo may not be used on the very products or their packaging, nor is it permissible to use it in a way that may create confusion with environmental product labels (Article 10(4)(b) Regulation 1221/2009)²². To be able to use the EMAS logo, the organisation in question must undergo the registration process. When placing the mark, for example on products or company materials, the logo must be accompanied by the organisation’s registration number (Article 10 Regulation 1221/2009). The application of the EMAS label is governed by Annex V Regulation 1221/2009.

4. CERTIFICATION (GUARANTEE) MARKS IN EUROPEAN UNION LAW

As a result of the European Commission’s evaluation of the functioning of the trade mark protection system in the Member States of the European Union, the European Union legislature

16 For more information in Polish, see ‘Co to jest EMAS’ [What is EMAS?], <<https://emas.gdos.gov.pl/co-to-jest-emas>> accessed 8 Feb 2023.

17 T Bojar-Fijałkowski, ‘Odpowiedzialność prawna organizacji z certyfikowanym systemem EMAS’ [Legal Liability of an Organization with a Certified EMAS system] in E Zębek, M Hejbudzki (ed), *Odpowiedzialność za środowisko w ujęciu normatywnym* [The Environmental Responsibility in Normative Terms] (Katedra Prawa Międzynarodowego Publicznego WPiA UWM 2017) 235–250.

18 Regulation (EC) 1221/2009 of the European Parliament and the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No. 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC [2009] OJ L 342, 1–45; hereinafter referred to as Regulation 1221/2009.

19 See Ibid. Paragraph 4 of Regulation 1221/2009.

20 See Communication from the Commission of 16 July 2008 to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan COM/2008/0397 final, <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52008DC0397>> accessed 15 Dec 2023.

21 The above-mentioned argumentation is available at <<https://emas.gdos.gov.pl/co-to-jest-emas>> accessed 8 Feb 2023.

22 It constituted a problem under the previously applicable rules governing the use of the logo in question. See paragraph 15 of Regulation 1221/2009.

has recently issued another (third) directive to approximate the Member States' laws on the legal protection of trade marks²³. Additionally, the EU legislature has issued a new regulation governing the protection of trade marks registered with an EU agency: the European Union Intellectual Property Office in Alicante (Spain)²⁴. Both legal acts introduced the possibility to protect certification (guarantee) trade marks. In a report presented in 2011 by the Max Planck Institute for Intellectual Property and Competition Law, it was noted that certification or guarantee marks were protected in many European Union Member States and that the lack of uniform legal regulation concerning this normative category of trade marks made it difficult to use them within the EEA.

As claimed by the European Union legislature, the introduction of a new category of trade marks was supposed to enable certification institutions or organisations to use the mark as a sign for goods and services that meet the requirements for certification²⁵. Certification marks are defined as signs 'principally indicia of conformity of goods or services to particular standards, stipulated by the proprietor of the mark'²⁶. In general, these characteristics are so-called 'quality characteristics'²⁷. This article does not outline the problem of using trade marks 'which may be construed as a nutrition or health claim' (Art. 1(3) Regulation (EC) No. 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods), which is broadly discussed in the literature²⁸.

a) EU certification marks

Apart from the above-mentioned guarantee marks (such as the EU organic production logo) administered by the European Union, since 1 October 2017, it is also possible to register certification marks with the EUIPO. Protection is granted to a sign as an EU certification mark when it is capable of distinguishing goods or services which are certified by the proprietor of the mark in respect of material, mode of manufacture of goods or performance of services (Article 83(1) Regulation 2017/1001). Geographical origin cannot be subject to certification (Article 83(1) Regulation 2017/1001). Therefore, it is not possible to effectively register as an EU certification mark a sign which indicates the geographical origin of the goods or services rendered²⁹. However, it is possible to create a mark which will indicate other features or attributes of the goods or services.

23 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 [2015] OJ L 336, 1–26 (hereinafter referred to as Directive 2015/2436). For more on the first step of the harmonisation, see C Gielen, 'Harmonisation of trade mark law in Europe: The first trade mark harmonisation. Directive of the European Council' (1992) *European Intellectual Property Review* 14(8), 262–269.

24 J Belson 32–33.

25 See Recital 27 of Regulation (EU) 2015/2424 of the European Parliament and the Council of 16 December 2015 amending Council Regulation (EC) No. 40/94 on the Community trade mark, and repeating Commission Regulation (EC) No. 2869/95 on the fees payable to the Office for Harmonisation in the Internal Market (Trade marks and Designs) (Text with EEA relevance) [2015] OJ L 341, 21–94.

26 J Belson 30.

27 N Pacaud, B Fontaine, 'Rencontre du troisième type: la marque de certification de l'Union européenne' (2017) *Propriété Industrielle* 11(28).

28 N Courtelis, PY Corre, 'The Legal Regime of Community Trademark 'construed as a Nutritious or Health Claim' (2008) *European Food and Feed Law Review* 3(1), 33; E Skrzydło-Tefelska, 'Oświadczenia żywieniowe i zdrowotne w prawie Unii Europejskiej a znaki towarowe' [Nutrition and Health Claims in European Union Law and Trademarks] (2019) *Europejski Przegląd Sądowy* [The European Judicial Review] 2(125), 8.

29 G Tritton, *Tritton on Intellectual Property in Europe* (Sweet & Maxwell 2020) 512.

Such a mark may be specific to a particular place (whether be it a city or a local business). This may have a particular impact on the image of the area, as well as on economic operators active in the area.

One example of a mark which can be registered as an EU certification mark is a sign which makes it possible to identify this category of trade mark. ‘An EU certification mark shall be an EU trade mark... if it is capable of distinguishing goods or services which are certified by the proprietor of the mark in respect of material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics, with the exception of geographical origin, from goods and services which are not so certified’ (Art. 83(1) Regulation 2017/1001).

Both natural and legal persons are entitled to apply for EU certification marks (Article 83(2) Regulation 2017/1001). The term *legal person* covers also any institution, body or entity of public law. Therefore, the EU certification mark may even be registered by an international organisation. For example, the EU organic logo was registered to the European Union as an EU certification mark. The greyscale logo has been just registered as number 0179961474, while the colour logo was declared for protection as an EU certification mark (application no. 01805852). The EU certification marks³⁰, registered so far include many marks also registered to various non-profit organisations. Also, nothing prevents a city submitting an application to register a mark.

The exclusive right granted to EU certification marks applies to the whole area of the European Union. In many situations, the registration rightsholder within a specific category of trade mark does not need such broad protection. Then an interesting alternative is to register a guarantee mark only in the territory of the Republic of Poland (or in another country that could be interested for a rightsholder).

Since 1 October, 2017 about 396 signs have been filed with the EUIPO as EU certification marks. 74 signs were registered as EU certification trade marks (from 1 October 2017 to 10 April 2020). Different signs have been registered by the EUIPO, some of which distinguish goods or services certified by the proprietor of the mark in respect of protecting the environment³¹.

b) Guarantee marks

Directive 2015/2436 introduced uniform protection of guarantee marks within the EEA (Article 28(1) Directive 2015/2436). The Polish legislature, by the Act of 20 February 2019 amending the Law on Industrial Property (LIP)³², introduced the possibility of protecting guarantee marks in the meaning of Directive 2015/2436. Before the introduction of this act, the protection of common guarantee trade marks existed. As noted in a report presented in 2011 by the Max Planck Institute for Intellectual Property and Competition Law, protection for certification marks (so-called guarantee marks) functioned in many European Union Member States (not only in Poland). However, the lack of uniform legal regulations concerning this normative category of trade marks made it difficult to protect them within the EEA. That is why the European Union legislature issued a new directive to approximate the Member States’ laws on certification (guarantee) trade marks.

30 As of 26 March 2020 the EUIPO has issued decisions on registering 74 signs as EU certification marks and between 1 October 2017 and 26 March 2020 a total of 247 signs were filed with the EUIPO for registration as certification marks.

31 See EU certification mark No. 017996233 (rightsholder: Green Brands Organisation GmbH), <<https://euipo.europa.eu/eSearch/#details/trademarks/017996233>> accessed 15 Dec 2023 or EU certification trade mark No. 017961474 (rightsholder: the European Union), <<https://euipo.europa.eu/eSearch/#details/trademarks/017961474>> accessed 15 Dec 2023.

32 Act of 20 February 2019 on Amendments to the Act on Industrial Property, WIPO Lex PL105.

A very important rule is that if the protection of the guarantee (certification) mark (in accordance with Directive 2015/2436) is not introduced, this prevents the conversion of an EU certification mark application, or an EU certification mark already registered, into a national guarantee mark application or a national exclusive right to a guarantee mark (Article 93 Regulation 2017/1001). Concerning the protection of guarantee (certification) marks, the European Union legislature has given some freedom to the Member States to establish more specific rules. For example, the protection of trade marks that designate the geographical origin of the good or service is left up to each EU Member State (Art. 28(4) Directive 2015/2436). In Poland, unlike an EU certification mark, a guarantee mark registered by the Patent Office of the Republic of Poland may also indicate the geographical origin of the good or service (Article 136 LIP). This makes it possible to protect those designations which directly indicate the origin of a product or service from a given locality or region. Such designations may therefore be used by cities or regions to promote products manufactured in a given location, showing or perhaps having other features or properties related to sustainable development. This may also provide an incentive for local businesses to manufacture their goods in compliance with certain environmental standards (more than usual).

5. OTHER EU DESIGNATIONS OF ‘GREEN MARKS’

Before the last amendment of the EU trade mark law, the so-called ‘marks of quality’ (including ‘green marks’ or ‘environmental’ marks) were registered as individual trade marks or collective trade marks in the Office of the Harmonisation of the Internal Market (OHIM; currently it is the European Union Intellectual Property Office [EUIPO]). EU certification marks can be registered in the EUIPO as of 1 November 2017.

The EU collective trade mark is another kind of trade mark available for protection in the EUIPO (OHIM) before Regulation 2017/1001 entered into force. Any mark to be registered as an EU collective mark must distinguish the goods and/or services of the members of association which is the proprietor of the mark from those of other undertakings (Art. 74(1) Regulation 2017/1001). One of the differences between the EU collective mark and the EU certification mark concerns the possibility of registering marks that ‘designate the geographical origin of the goods or services’ (Art. 74(2) Regulation 2017/1001; in accordance with Art. 28(4) Directive 2015/2436, certification [guarantee] trade marks registered in some European Union Member States can also designate the geographical origin of the goods or services).

Some famous signs protected by special EU regime – geographical indications registered by the European Commission – are also registered as collective marks registered by the EUIPO, for example, protected geographical indication (PGI) protected under the trade mark no. 1269024³³, protected designation of origin (PDO) registered under the trade mark no. 1269025³⁴ and Traditional Specialities Guaranteed (TSG) protected under trade mark no. 1268381³⁵. These signs are protected as EU collective marks. The proprietor of each one is the European Union, represented by the European Commission.

33 EU certification mark No. 1269024 (rightsholder: Shenzhen Bolinhuayu Technology Co., Ltd), <<https://euipo.europa.eu/eSearch/#details/trademarks/W01269024>> accessed 15 Dec 2023.

34 EU certification mark No. 1269025 (rightsholder: The European Union), <<https://euipo.europa.eu/eSearch/#details/trademarks/W01269025>> accessed 15 Dec 2023.

35 EU certification mark No. 1268381 (rightsholder: The European Union), <<https://euipo.europa.eu/eSearch/#details/trademarks/W01268381>> accessed 15 Dec 2023.

Another EU collective mark that had been registered by the European Union was a logo dedicated for EU organic production. It was filed with the Office of the Harmonization of the Internal Market (currently the EUIPO) on 27 May 2010 and registered on 7 September 2012 (trade mark no. 009136714³⁶). The registration of the above mentioned trade mark was, invalidated. The sign is now protected as an EU certification mark (trade mark no. 017961474³⁷).

Collective marks were protected at the national level before the last harmonisation of trade mark laws. However, in Directive 2015/2436 (Recital 35 Directive 2015/2436) it was remarked that collective trade marks are a useful instrument for promoting goods or services with certain characteristics. In accordance with Art. 29(1) Directive 2015/2436, each European Union Member State must provide the protection of collective marks. Thanks to Directive 2015/2436, the actual protection of collective marks is similar in each Member State. The protection of such marks should be approximated to EU collective trade marks registered by the EUIPO in Alicante (Recital 35 Directive 2015/2436).

Before Regulation 2017/1001 entered into force, some quality marks were also registered as community trade marks (so-called ‘individual’ or ‘ordinary’ trade marks). According to a judgement of the Court of 8 June 2017³⁸, individual trade marks (registered nationally or in the European Union) cannot be protected only as a ‘label of quality.’ This usage is not a genuine use of individual trade marks. That is why pure ‘green marks’ cannot be registered as individual trade marks and should instead be protected as certification (guarantee) trade marks at the local, regional (European) or international level³⁹. EU certification marks create a new possibility for protection that cannot be replaced by other existing kinds of trade marks registered in Alicante.

6. FINAL REMARKS

Cities and rural areas are acting with more and more awareness to implement sustainable development principles. They often do so in cooperation with local businesses, which stimulates local economic growth. The recent changes in the field of trade mark protection in the European Union and the introduction of uniform protection of certification (guarantee) marks may also be helpful in this respect. This type of trade marks, apart from the ‘green’ trade marks administered by the European Union for several years (in particular Ecolabel, the EU organic logo or EMAS) may be an interesting form of cooperation between the local government and local businesses, and may thus contribute to local economic growth. It could help to create an interesting local economic asset of local ‘green’ trade marks. Municipalities and local entrepreneurs could consciously use different types of ‘green’ signs created by them or supervised by the European Union.

By creating ‘green’ trade marks, municipalities and local entrepreneurs could build a kind of economic asset with a huge economic value. It is very important for municipalities and local entre-

36 EU certification mark No. 1269024 (rightsholder: The European Union), <<https://euipo.europa.eu/eSearch/#details/trademarks/009136714>> accessed 15 Dec 2023.

37 EU certification mark No. 017961474 (rightsholder: The European Union), <<https://euipo.europa.eu/eSearch/#details/trademarks/017961474>> accessed 15 Dec 2023.

38 See Judgment of the CJEU C-689/15 EU:C:2017:434.

39 K Wernicka, ‘Indywidualny znak towarowy znakiem certyfikującym – glosa do wyroku Trybunału Sprawiedliwości z 8.06.2017 r., C-689/15, W.F. Gözze Frottierweberei GmbH i Wolfgang Gözze przeciwko Verein Bremer Baumwollbörse’ [An Individual Trademark as a Certification Mark. Commentary on Court of Justice Judgment of 8 June 2017, C-689/15, W.F. Gözze Frottierweberei GmbH and Wolfgang Gözze v. Verein Bremer Baumwollbörse], (2019) Glosa – Prawo Gospodarcze w orzeczeniach i komentarzach [The Commentary – Economic Law in Judgments and Comments] 1(1), 79–85.

preneurs to exploit the full potential of local IP, especially of ‘green’ trade marks. It could lead to local economic development. Any ‘green’ trade mark created by local government or local business should be protected as a certification (guarantee) trade mark. According to European Union law, each certification (guarantee) trade mark can be protected, generally, through a national body (e.g. the Polish Patent Office) or a regional one (e.g. the EUIPO). Registered certification (guarantee) trade marks could be licensed, providing added value for municipalities and entrepreneurs. The creation of new ‘green’ trade marks could be a tool to improve local economic development.

Such ‘green’ trade marks of local government and local business could be also useful for European Union citizens in their everyday shopping. Purchasing decisions are very often based on different factors, for example, environmental and social influences. In the decision ‘to buy or not to buy’, the role of labelling could be also quite important: our consumption choices could have some negative consequences for us, for our families or for the environment. Well designed ‘green’ signs could communicate to potential buyers positive information about environmentally friendly characteristics of a good or service. This ‘green’ trade mark could project a positive image of a product, or of a locality. It should also be a factor in local economic development.

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