

Trademark Office refines criteria for registration of colour marks Colombia - Triana Uribe & Michelsen



Examination/opposition National procedures Non-traditional marks

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Although trademarks consisting of colours within an outline have been regulated for a very long time in Colombia under Andean Community decisions, before 2010 colour trademark applications were granted by the [Colombian Trademark Office](#) as graphic or combined trademarks (ie, graphic marks claiming a particular colour). It was only in 2012 that the Trademark Office granted its first colour trademark as such.

This development led companies to apply for colour trademarks to protect their very recognisable goods - that is, the colour of the goods or of their packaging or labels, with which consumers were familiar.

The first colour trademark granted in Colombia belongs to [Owens Corning Intellectual Capital LLC](#), which applied for registration of the mark depicted below in 2010 to identify insulation material of a pink colour.

Trademark registration	Product
 <p data-bbox="81 965 277 994">File No 10 101482</p> <p data-bbox="81 1021 309 1050">Certificate No 455467</p>	

As with other trademarks, the distinctiveness of a colour mark is based on the fact that:

1. the colour is not usual or required for the goods identified by the mark; and
2. the mark is not confusingly similar to other trademarks already registered for identical or related goods.

In the present case, a pink dye was added during the manufacturing process, as the usual colour of insulation material goes from white to grey, or even light green, depending on the kind of bottles recycled to produce fiberglass (the raw material used to make insulation).

This trademark application assisted the Trademark Office in determining how the requirement of graphical representation should be met, since Colombia is not party to the [Singapore Treaty on the Law of Trademarks](#), which sets out a multilateral framework for the definition of the criteria governing the representation of hologram, motion, colour, position and other non-traditional trademarks. Colour trademarks must be able to be represented graphically and, as such, the colour should be duly delimited and the application should contain a description of the colour using an international standard, such as Pantone, Focoltone, RGB or any other.

Following the registration of Owens Corning's colour mark, another company, Colombian soda manufacturer [Postobon](#), faced more difficulties when it sought to register a pink colour trademark to identify non-alcoholic beverages, as there were several other sodas of a pink colour on the Colombian market (all of them for the same flavour, apple). The opponent, based on the fact that there were few decisions regarding colour trademarks, requested that the application be refused based on all imaginable grounds (eg, the colour could not constitute a trademark, lacked distinctiveness, was usual, descriptive and generic, and would confer a functional advantage on the applicant).

The main concern was that the colour pink was used by other manufacturers. Thus, Postobon had to overcome that issue by demonstrating that, in fact, the colour pink was not a common colour for apple beverages.

Trademark registration	Product



Apple beverages all over the world have an amber to brownish colour due to the oxidation of the fruit. The use of the colour pink was part of a marketing strategy by Postobon, which was so successful that other manufacturers of apple beverages in Colombia, in order to compete, had to mimic Postobon's strategy and colour.

Given that there were in fact so many other pink beverages on the market, Postobon decided to prove acquired distinctiveness; nonetheless, the colour pink trademark application passed the registration exam with 'flying colours' based on the quality of the evidence filed. First, Postobon proved that it had used the colour pink for apple beverages since 1954, long before any other apple or pink sodas were put on the market in Colombia. Second, it demonstrated that at least 77% of the general population recognised pink beverages as Postobon's apple beverages. Finally, it established considerably high sales during the period from 2003 to 2009.

Considering the above, the Trademark Office deemed that the colour pink was distinctive for apple beverages, given that consumers made a connection between the products and their manufacturer. In addition, it ascertained that:

- the specific shade of pink used by Postobon was not a natural colour either for apples or for their juice or extract; therefore, the trademark could not be found to be descriptive;
- the trademark was not considered to be generic as it did not refer to the nature, category or type of non-alcoholic beverages; and
- the bottle was not being claimed in the mark, since the bottle was merely used to limit the colour.

Consequently, the colour pink mark was granted to Postobon to identify non-alcoholic beverages. This decision completed the list of administrative requirements necessary for the registration of colour trademarks in Colombia, which had been initially determined in the case concerning the colour pink for insulation material.

As with other trademarks, whether traditional and non-traditional, the main issue was the nature of the trademark. Despite all the arguments used by the opponent, none of them was duly supported.

The latest decision regarding colour trademarks in Colombia concerned the colour green to identify cocoa-based preparations. In this case, [Nestlé](#) obtained the registration of the following trademark:

Trademark registration	Product
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VERDE PANTONE 361 C



File No 13 015116

The colour green is usually related to ecology; however, for cocoa-based preparations, it was found that the colour green brought Nestlé's MILO product to mind.

Thus, the path is open for more colour trademarks and other non-traditional trademarks.

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