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Switzerland

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Principle of equal treatment allows registration of IPUBLISH

The Federal Commission of Appeal for Intellectual Property Rights (commission) has annulled a decision by the Swiss Federal Trademark Office (TO) to refuse the registration of IPUBLISH for internet publishing (Case MA-AA 27/02).

[Jahreszeiten Verlag GmbH](#), a German company, applied to register IPUBLISH for a number of services. The TO allowed registration in part but held that the mark lacked distinctiveness with respect to internet publishing services. It stated that the Swiss public would understand the 'I' as an abbreviation for 'Internet' or 'information' and that, together with the generic term 'publish', the mark was descriptive.

However, shortly after it had (partially) refused the registration, the TO allowed the trademarks IDOCUMENT, IPROJECT, IDIARY, IFAST and I-SIGHT to be registered for internet-related goods and services.

In the opinion of the commission, this gave Jahreszeiten Verlag a claim to be treated equally, regardless of whether the mark lacked distinctiveness. It therefore ordered the registration of IPUBLISH for all the services claimed, including internet publishing.

It appears that the commission feels that the principle of equal treatment justifies the registration of (possibly) unregistrable marks. The practitioner should keep in mind, however, that in the case at hand the similarly composed marks were registered after the registration of IPUBLISH had been refused. In most cases, applicants will claim equal treatment with previously registered trademarks. The commission is much more reluctant to grant registration based on the principle of equal treatment when the claim is based on a comparison with older trademarks.

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