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Co-opting Political Symbols for Commercial Use

October 5, 2011 by [Sharon Armstrong](#)



The Lanham Act prevents applicants from registering any of a number of words and devices as marks, including immoral or scandalous matter and flags or coats of arms. In terms of the latter exclusion, such a prohibition makes sense; without it, for example, any merchant could use an American flag to hawk goods and services regardless of whether they had any affiliation with the U.S. government.

But what about designs that used to be part of national flags and, once upon a time symbolized a nation, but are no longer? As the recent example of [South Sudan](#) shows, new boundaries – and nations – can emerge at any time, fundamentally changing the maps we use and the countries of which such nations used to be a part.

While I am not aware of any adjudication of this issue in the United States – please [let us know](#) if you do – the European Union has dealt with this issue recently. Specifically, the EU General Court rejected an attempt by Couture Tech Ltd. ("CTL") to register a trademark for the Soviet sickle and hammer for use in connection with a variety of goods and services in Classes 3, 14, 18, 23, 26 and 43. These classes include personal care products and restaurant services, among many other goods and services.

Under EU law, a trademark may not be registered if doing so would be contrary to public policy, and that this standard must take into account the views of the relevant public in the EU, even if the relevant public resides in only one Member State. In particular, the court noted that both Hungary and Latvia ban the use of certain symbols such as the hammer and sickle as trademarks.



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The applicant argued that the political connotation of the former USSR's coat of arms had been diffused over time into something other than a political symbol. However, although the boundaries of the Soviet Union disintegrated in 1991, the court found that these symbols continue to be viewed by a significant portion of the population in Hungary – namely those persons who lived during the existence of the USSR – as political symbols. As such, the court refused registration of the mark.

Beyond the overt political connotation of an entwined hammer and sickle, the use of such a symbol strikes this author as a sure-fire way simply to confuse or offend one's customers to the point of refusing to buy one's product. The applicant argued that its use of the hammer and sickle as a commercial trademark is "avant-garde." While making commercial use of a symbol formerly used to advance a communist regime may indeed turn the original meaning of the symbol on its head, this author wonders how many consumers would give a mark such thought before deciding whether or not to buy the product or service with which the product is used.

What do you think of co-opting political symbols for commercial use?

