

Can you trademark a cultural property in France?

Categories : [Trademark](#)

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Cultural property is defined as tangible or intangible assets of a society, which may include emblems, buildings, monuments, folklore or tradition^[1]. Owned by the State or a private entity, cultural properties are generally inherited from past generations and are preserved, bestowed and passed onto the future generations.

Cultural properties have significant values, given that they could easily make impression on people all over the world. Distinguishing goods and services by sign imbued by historical, cultural or traditional value could be part of a strategy for your client to draw public attention. *Has anybody ever associated Paris with La Tour Eiffel or with the Mona Lisa by Leonardo da Vinci?*

It's all about balancing the interests between **the national legal protection of cultural heritage** and **the applicant's freedom of enterprise**. Before trademarking a cultural property, checking the national legislations of the countries you are interested in is necessary to secure your rights. Indeed, the scope of protection of cultural heritage differs from one country to another.

For instance, the US federal legislation, the article 2 of the Trademark act prohibits the registration of national emblems such as *"flags, or coat of arms or other insignia of the United States, or of any State or municipality, or of any foreign nation, or any simulation thereof"* but it also protects all the living or dead Presidents' names and the White House image.

On the other hand, in France the scope of protection is reduced to international minimum standard. In fact, the French Intellectual property code (FIPC) only refers to the Paris Convention which prohibits the use of State emblems as a trademark^[2].

Generally, **the registration of cultural and historic value objects as trademarks in France is relatively easy** and unimpeded once provided that:

- **the sign does not represent a governmental or national emblem.** The article 2 of the French Constitution gives an exhaustive lists of official State emblem, namely: the French tricolour flag, the national anthem "La Marseillaise", and the motto of the Republic "Liberty, Equality, Fraternity";
- **public policy or morality are preserved^[3];**
- **other intellectual property rights have expired, which means there is no more copyright protection over the work.** Member States of Berne Convention could define the term of the copyright within the limits of the Convention^[4]. In France, copyright work falls into public domain 70 years after the author's death^[5].



The French Office has for example already accepted the registration Mona Lisa in the following cases:

French mark n°3981897, filed in class 32 for drinks, on February 11th, 2013.

European union mark n°16238909, filed in classes 29, 30, 32, 33 and 43 for food and drinks, on January 10th, 2017.

One important observation though. There seems to be a more and more common tendency for copyright owners and/or their heirs and/or affiliated companies (owned by them), to register cultural properties as trademarks prior to the expiration of copyright in order to perpetuate their rights over them.

This means that contrary to what one may think **the use of cultural properties may still be unavailable to others despite the copyright expiry**. As such, should one wish to start using such property supposing that it is in the public domain, there may still be an interest in conducting availability check among trademarks to make sure that such use would not infringe somebody's rights.

Do not hesitate to contact Inlex IP Expertise (contact@inlex.com) for further assistance, it will be our pleasure to assist you.

Kamile VAREKAMP & Wendy LAM IP Lawyers

^[1] Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention (1954)

http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html

^[2] Article L711-3 paragraph a) of the FIPC transposing Article 6ter of Paris Convention for the Protection of Industrial Property.

Article L711-3 of FIPC: “*The following may not be adopted as a mark or an element of a mark:*

1. a) *Signs excluded by Article 6ter of the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised or by paragraph 2 of Article 23 of Annex 1C to the Agreement Establishing the World Trade Organization.(...) .”*

<https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006069414&idArticle=LEGIARTI000006279684&dateTexte=&categorieLien=cid>

Article 6ter of Paris Convention: “*The countries of the Union agree to refuse or to invalidate the registration, and to prohibit by appropriate measures the use, without authorization by the competent authorities, either as trademarks or as elements of trademarks, of armorial bearings, flags, and other State emblems, of the countries of the Union, official signs and hallmarks indicating control and warranty adopted by them, and any imitation from a heraldic point of view.*” (...)

<http://www.wipo.int/article6ter/en/index.html>

^[3] Article L711-3 of FIPC: “*The following may not be adopted as a mark or an element of a mark: (...) b) Signs contrary to public policy or morality or whose use is prohibited by law*”;

^[4] Article 7 of the Berne Convention.

http://www.wipo.int/treaties/en/text.jsp?file_id=283698#P127_22000

^[5] Article L123-1 of the FIPC, alinea 2: “*On the death of the author, that right shall subsist for his*



successors in title during the current calendar year and the 70 years thereafter.”