

## Federal Administrative Court: MAX is descriptive for computer programs

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### SWITZERLAND

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- The IGE rejected an application for MAX in Classes 9 and 42 on the ground that the sign was descriptive and laudatory
- The applicant argued that 'Max' has several meanings, in particular that of a first name
- The court found that 'Max' would be understood primarily in the sense of "maximum or maximal" in connection with the goods and services at issue

The Swiss Federal Administrative Court has affirmed a decision of the Federal Institute of Intellectual Property (IGE) denying the registration of the word mark MAX for goods and services in Classes 9 and 42 ([Case B-1014/2024](#), 8 August 2024).

### Background

Modular Inc filed the Swiss trademark MAX (No 06530/2023) for goods in Class 9 and services in Class 42.

By decision of 22 January 2024, the IGE rejected the application for registration in its entirety. It based its decision on the fact that the sign was directly descriptive and laudatory ('max' being an abbreviation of 'maximum') in connection with the goods and services claimed. Therefore, the mark belonged to the public domain and was not eligible for trademark protection.

An appeal against this decision was filed with the Federal Administrative Court on 16 February 2024. Modular Inc requested that trademark protection be granted for all the goods and services claimed in Classes 9 and 42. It argued that the sign MAX has several meanings, in particular that of a first name, which is why it could not be assumed to be descriptive.

### Decision

The Federal Administrative Court analysed the trademark in connection to the goods and services claimed, which consisted of computer programs for the development of software and the provision of such computer programs. Such goods and services were found to be inherently technical in nature, as their functioning consisted essentially of the processing of various values or measured

quantities. The court held that the understanding of the sign MAX as a “maximum in the sense of a maximum value or a maximum size” would be obvious in connection with computer programs. Contrary to Modular Inc's arguments, the court found that such understanding required no further thought on the public's part, in particular because the relevant public consisted of professionals from the IT sector, who were likely to follow a highly technical way of thinking. 'Max' would therefore be understood primarily in the sense of “maximum or maximal” in connection with the goods and services claimed and, as such, the sign MAX was merely descriptive. The appeal was therefore rejected.

## Comment

According to the IGE's constant practice, trademarks consisting only of 'max' will not be allowed. The abbreviation of 'maximum' is clearly in the foreground as a potential meaning, before the male name Max. If one wanted to argue that MAX would be understood as a name (in Switzerland, names are generally distinctive and thus registrable), then the trademark would have to be supplemented with another element clearly indicating that the mark referred to a name.

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