Real stupidity always trumps AI – registrable and enforceable seen from an European view?

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What's in a word?

Definition of SLOGAN

1. a: a war cry especially of a Scottish clan  
   b: a word or phrase used to express a characteristic position or stand or a goal to be achieved

2. : a brief attention-getting phrase used in advertising or promotion
The purpose of a slogan?

- Companies have slogans for the same reason they have logos:
- Advertisement!
What makes a great slogan?

› It’s memorable
› It uses rhymes or rhythms or both
› It impacts positive feelings about the company
› It is short and to the point
› It has clarity and sometime a punchline
› Use humor
› Use emotion
And then came the LAW...

Art. 7 in EUTMR No. 2017/1001

The following shall not be registered:

b) trade marks which are **devoid of any distinctive character**;

c) trade marks which **consist exclusively** of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, **or other characteristics** of the goods or service;
EUIPO’s old Guidelines

- A slogan is always registrable if
  - it contains a word (or words) which is (are) distinctive on its (their) own. Example: “Carlsberg - Probably the Best Beer in the World,” or
  - if they contain an element of fancifulness

- However, a slogan can be descriptive if it
  - Highlight desirable characteristics, *Mehr für Ihr Geld*
  - Contain a general invitations to buy, *TASTE ME*
  - Is a laudatory statements *Making improvements in life possible* or
  - It seek to promote the superior knowledge *GOLD REWARDS PLUS*, client friendliness, economic success *GREEN TECHNOLOGICAL DAMPER*, or availability *ON TAP*
EUIPO’s new Guidelines

➢ It is inappropriate to apply to slogans stricter criteria than those applicable to other types of signs when assessing their distinctive character (judgment of 12/07/12, C-311/11 P, Wir machen das Besondere einfach

➢ Use of:
   ➢ An unusual syntactic structures
   ➢ A linguistic and stylistic devices, such as alliteration, metaphors, rhyme, paradox, etc.
   may contribute towards a finding of distinctiveness

➢ Advertising slogans or promotional formulas are objectionable, for example Safety 1st
Help from the Court of Justice

…likely to be distinctive whenever it is seen as more than a mere advertising message extolling the qualities of the goods or services in question because it:

▸ constitutes a play on words and/or
▸ introduces elements of conceptual intrigue or surprise, and/or
▸ has some particular originality or resonance and/or
▸ triggers in the minds of the relevant public a cognitive process or requires an interpretative effort.
Accepted marks

› TRULY COVERED

› SITEINSIGHTS

› BRAIN INSPIRED

› ALL YOU NEED IS LOVE

› WET DUST CAN'T FLY

› LOVE TO LOUNGE
Examples of rejected marks

› INNOVATION FOR THE REAL WORLD
› PASSION FOR BETTER FOOD
› FOREVER FASTER
› LET'S GET COMFORTABLE
› TO CREATE REALITY
› MOBILE LIVING MADE EASY
› 2good
Let’s take a look at the slogan from the beginning:

★ Real stupidity always trumps AI

★ Does it fulfill the criteria’s?
  ★ Is it a play on words?
  ★ Does it introduce a elements of conceptual intrigue or surprise?
  ★ Does it have some particular originality or resonance?
  ★ Will it trigger in the minds of the relevant public a cognitive process or requires an interpretative effort?
And...where would we be without slogans like...

› THERE ARE SOME THINGS MONEY CANT BUY – AND THEN THERE IS MASTERCARD
› JUST DO IT
› THINK DIFFERENT
› BECAUSE YOUR WORTH IT
› MELTS IN YOUR MOUTH NOT YOUR HAND
› A DIAMOND IS FOREVER
› I’M LOVING IT
Thank you for your attention!

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