

D YOUNG & CO TRADE MARK NEWSLETTER *no.97*

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In this issue:

Polo logos **04**

Beverly Hills Polo Club
v Santa Monica Polo Club

Local use and invalidations **05**

When use can defeat a registration

Invalidity and infringement **06**

Burgerista Operations v Burgista Bros

Acacia v Audi and Porsche **07**

The wheel meaning of the repair clause

A top up from the General Court **08**

Coca-Cola v Mitico

**Red Bull EU trade mark
registrations invalidated**
Colour me sufficiently
clear and precise

Full story [Page 02](#)



Spring 2018 brings a busy conference diary for our trade mark attorneys and solicitors, with trips planned within Europe and also to Japan and the US. Like many of our readers we are now making plans for the INTA Annual Meeting in Seattle. We look forward to meeting with friends, colleagues and clients at the forthcoming trade mark events – do let us know if you would be interested meeting up.

The D Young & Co trade mark team, March 2018

Events



19-23 May 2018

INTA Annual Meeting, Seattle, US

The D Young & Co trade mark team will be joining trade mark and brand professionals from around the world at the 140th Annual Meeting of the International Trademark Association in May 2018. Partners Jeremy Pennant, Jackie Johnson, Helen Cawley, Matthew Dick, Gemma Kirkland and Tamsin Holman and Senior Associates Richard Burton and Anna Reid will be attending the conference. Please contact us if you would like to arrange a meeting during the conference.

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Invalidity

Red Bull EU trade mark registrations invalidated

Colour me sufficiently clear and precise

The General Court (GC) has recently upheld a decision invalidating two of Red Bull's European Union Trade Mark (EUTM) registrations for a colour combination mark on the basis that they were not sufficiently clear and precise.

Red Bull colour combination marks

In 2002, Red Bull applied for a colour combination mark as set out below, covering “energy drinks” in class 32:



The mark proceeded on the basis of acquired distinctiveness, and during the course of examination Red Bull included the following written description: “Protection is claimed for the colours blue (RAL 5002) and silver (RAL 9006). The ratio of the colours is approximately 50%-50%.”

In 2010, Red Bull filed a second EUTM application for the same mark. Although published within two months of filing, the examiner requested that an indication be given of the proportions in which the two colours would be applied, as well as the way in which those colours would appear. The applicant responded that “the two colours will be applied in equal proportion and juxtaposed to each other”. The mark proceeded to registration with this verbal description, as well as noting that the colours were “blue (Pantone 2747C) and silver (Pantone 877C)”.

Optimum Mark applications for invalidity

In September 2011, Optimum Mark sp.z o.o. (Optimum Mark) applied to invalidate the second registration for failing to comply with the modern iteration of Article 7(1)(a), (b) and (d) of EUTM Regulation 2017/1001, on the basis that the graphic representation of the mark was not clear, precise, self-contained, easily accessible, intelligible, durable, objective and systematically arranged by associating the colours in a

predetermined and uniform way. Optimum Mark also noted that the term “juxtaposed” could be understood as “having a border in common with”; “placed side by side”; or “dealt with close together for contrasting effect”. As such, it claimed that the registration did not indicate the type of arrangement in which the two colours would be applied to the goods and was therefore not self-contained, clear and precise.

In September 2013, Optimum Mark applied to invalidate the first registration on similar grounds, claiming that the verbal description allowed for numerous different combinations of ratios of “approximately” 50% to 50% of the two colours and therefore numerous arrangements such that consumers would not be able to repeat with certainty a purchase experience.

EUIPO decision

In October 2013 the EUIPO found both marks to be invalid, noting that they both constituted the “mere juxtaposition of two or more colours, designated in the abstract and without contours” (in line with the CJEU's judgment in *Heidelberger Bauchemie* (C-49/02)) and did not exhibit the qualities of precision and uniformity required, since they allowed numerous different combinations which would not permit consumers to perceive and recall a particular combination, thereby enabling them to repeat with certainty the experience of a purchase; nor would they allow the competent authorities and economic operators to know the scope of protection afforded.

Board of Appeal decision

Red Bull unsuccessfully appealed both decisions. The Board of Appeal noted that the requirements of registration laid down in Article 4 of the EUTM Regulation were also intended to prevent the abuse of trade mark law by allowing a brands owner an unfair competitive advantage (as well as enabling competent authorities and economic operators to have precise information of third party rights).

Red Bull had tried to argue that the graphic representation was sufficiently precise in

➤ **Case details at a glance**

Jurisdiction: European Union

Decision level: General Court

Parties: Red Bull GmbH (applicant), supported by Marques (intervener) v EUIPO (defendant) and Optimum Mark sp. z o.o

Citation: 2017] EUECJ T-101/15,

ECLI:EU:T:2017:852, EU:T:2017:852

Date: 30 November 2017

Full decision: <http://dycip.com/redbullvoptimummark>

that it showed the colour blue on the left, and the colour silver on the right, both being juxtaposed (that is, divided into equal proportions by a central vertical line). The Board of Appeal noted that an explicit description to that effect should have accompanied the representation of the marks.

Red Bull appealed to the General Court.

Before the General Court, Red Bull argued that:

- Heidelberger Bauchemie had been applied too strictly, and that it should only apply to combinations of colours *per se*, containing a description expressly claiming protection “in every conceivable form”, unlike the description of the two registrations in question which was precise and not arbitrary;
- For the Board of Appeal to require a detailed description of the way in which the marks would be used was appropriate for assessing a claim of acquired distinctive or genuine use, but not whether a mark complied with the requirements of precision etc, set out in Article 4;
- Requiring an “explicit” description of the actual use of a colour mark was tantamount to imposing an additional condition for the registration of colour combination *per se* marks.

Red Bull and Optimum Mark at the General Court

The General Court noted that

as a founding principle, a European Union trade mark must always be perceived unambiguously, uniformly and durably, so that the function of the mark as an indication of origin is guaranteed.

In that respect, it was important to

consider whether the contested marks allowed numerous different combinations of the two colours at issue.

The graphic representation of both marks was identical (a vertical juxtaposition of the colours blue and silver, in the ratio of 50:50).

A different verbal description accompanied each mark, one describing the colours in the context of the RAL system and noting the “approximately 50%-50%” ratio; the other used the Pantone colour reference system and noted that the colours “will be applied in equal proportion and juxtaposed to each other”.

The General Court agreed with the Board of Appeal that the graphic representations of both marks consisted of a mere juxtaposition of two colours without shape or contours, allowing several different combinations of those colours. It also agreed that the verbal descriptions did not provide additional precision as regards the systematic arrangement associating the colours in a predetermined and uniform way, precluding a number of different combinations.

The General Court noted that the evidence submitted by Red Bull in order to support a claim of acquired distinctiveness showed the marks used in a manner “very differently in comparison to the vertical juxtaposition of the two colours shown in the graphical representation[s]”.

The General Court confirmed that the outcome of having an EUTM registration allowing a plurality of reproductions (which are neither predetermined in advance nor uniform) “is precisely the outcome” which the judgment in Heidelberg

Bauchemie had sought to prevent. The court also rejected Red Bull’s argument that this would effectively amount to the denial of the existence or registrability of the concept of colour combination marks *per se*, noting that

applicants should merely file a graphic representation of the mark corresponding precisely to the subject matter of the protection they wish to secure (and no more).

Red Bull also tried to argue that by requiring a description of a systematic arrangement of colours that are the subject of a combination of colours *per se* would effectively remove the distinction between colour *per se* marks and figurative marks.

The General Court rejected this, noting that even if the description of a precise arrangement of colours makes a colour *per se* mark more akin to a figurative mark, the subject matter of the protection afforded by those two categories of marks remains distinct.

Author:
Matthew Dick



In short

This case highlights the increasing difficulties in registering colour marks *per se*, whether comprising a single colour or a combination of colours, and of defending such registrations that may have been granted under earlier, perhaps more forgiving, jurisprudence.

Polo logos Beverly Hills Polo Club v Santa Monica Polo Club

➤ **Case details at a glance**
Jurisdiction: England & Wales
Decision level: High Court
Parties: LIFESTYLE EQUITIES C.V and LIFESTYLE LICENSING B.V (claimants) and SANTA MONICA POLO CLUB LIMITED & OTHERS
Citation: [2017] EWHC 3313 (Ch)
Date: 21 December 2017
Full decision: <http://dycip.com/polologos>

The High Court of England & Wales finds trade mark infringement and passing off in a battle between polo logos. This case was brought by the proprietor of UK and EU trade marks for the BEVERLY HILLS POLO CLUB logo (below), registered in relation to, amongst others, clothing goods in class 25:



The proprietor brought proceedings for trade mark infringement and passing off relating to the defendants' use of a number of SANTA MONICA POLO CLUB logos, mostly on clothing. These logos included the following variants:

"one horse logos":



"two horse logo":



"three horse logo":



On the evidence, the defendants had moved to the three horse logo after complaints by the trade mark proprietor about the one and two horse logos.

The decision

The court held that all of the one horse logos and the two horse logo infringed the UK and EU trade marks on the basis of likelihood of confusion, dilution and taking unfair advantage, and that the use of these signs also amounted to passing off. The judge appeared to base his findings in respect of the one horse logos

on the fact that they are each dominated by the side-on depiction of a running pony plus polo player with a raised stick, together with other elements that are neither dominant nor distinctive. With the two horse logo, the judge cited the fact that although there were two horses, they were simply mirror images of each other, coupled with the curved lettering above and POLO CLUB beneath, all shown in capital letters. Other visual elements of the two horse logo such as the laurel wreath were deemed to be non-distinctive.

Overall, the court's findings in relation to the one and two horse logos may come as something of a surprise, in light of the number and nature of the visual differences that are present compared with the BEVERLY HILLS POLO CLUB trade marks. This, in turn, raises a note of caution in relation to clearance searching for logos of this type.

With the three horse logo, on the other hand, the court held that the overall impression created by this sign **was** sufficiently different from the trade mark for there to be no likelihood of confusion or passing off. Nevertheless, the similarity of the three horse logo was still sufficient to "call to mind" the BEVERLY HILLS POLO CLUB trade marks and it therefore infringed on the basis of dilution and unfair advantage.

Points to note

Interestingly, in assessing reputation for the purpose of the dilution and unfair advantage claims (ie, infringement under Art. 9(2)(c) EUTM Regulation and s.10(3) Trade Marks Act 1994), the court accepted the proprietor's argument that: "the reputation of the trade mark need not be in relation to the goods or services for which the trade mark is actually registered".

Therefore, the court took into account the reputation gained as a result of the claimant's use of the marks for luggage (for which the marks were not registered), in addition to its use in relation to the class 25 goods for which the marks were registered. In doing so, however, the judge noted that the greater the distance between the goods which actually generate a mark's reputation, and the defendant's goods, the less likely it will be that the average

consumer will form any link with the mark and/or that there will be any damage to the mark.

On the question of whether use of the three horse logo took "unfair advantage", the judge said: "Merely gaining advantage, without more, is not necessarily unfair. The added factor here which makes it unfair is that the defendants wanted to maintain continuity with [the one and two horse logos] which I have already found to infringe". The judge went on to say: "It would be different if the defendants' previous signs had not infringed, and/or if the three horse logo had made a clean break with them."

Author:
Tamsin Holman



In short

This case is a reminder of the perils of amending a sign in an attempt to avoid infringement, whilst retaining sufficient similarities to maintain continuity in the marketplace. Deciding where to draw the line is never easy, but a "clean break" is the safest course.

Further, there is a note of caution here about the relatively broad-brush approach taken by the court in its comparison of the BEVERLY HILLS POLO CLUB logo with the various SANTA MONICA POLO CLUB logos used by the defendant, for the purpose of assessing infringement. Arguably, the effect of this is tantamount to the grant of a monopoly over the use of a side-on view of a polo player coupled with the words POLO CLUB and a place name.

Local use and invalidations

When use can defeat a registration

🔍 Case details at a glance

Jurisdiction: UK

Decision level: Court of Appeal

Parties: CASPIAN PIZZA LIMITED and others (claimants) and MASKEEN SHAH and others (defendants)

Citation: [2017] EWCA Civ 1874

Date: 23 November 2017

Full decision: <http://dycip.com/caspianpizza>

This Court of Appeal decision considers the question of unregistered use and when it can be used to defeat an existing registration. The Court of Appeal held that localised unregistered use may be sufficient to invalidate a registered trade mark, even if the date of first use of the registered trade mark predates that of the unregistered use.

Background

The claimants had operated a business in Birmingham, UK called CASPIAN PIZZA since 1991. Use of CASPIAN PIZZA was protected via trade mark registrations for CASPIAN dating from July 2005 and the mark below which dates from September 2010.



Since 2002, the defendants had operated pizza restaurants in Worcester, UK under the name CASPIAN.

After a franchise agreement between the parties ended, the claimants issued infringement proceedings against the defendants alleging trade mark infringement of their CASPIAN registration. In response to the infringement action, the defendants claimed their own goodwill in the CASPIAN name as a result of their use of CASPIAN in Worcester since 2002 (which predated the franchise agreement previously entered into) and applied to invalidate the claimants trade mark registrations on the grounds of passing off.

The judge at first instance held that the claimants use of CASPIAN since 1991 could not be relied on in an infringement action based on a 2005 registered trade mark against the defendants' use in Worcester since 2002, as the Trade Marks Act 1994 does not confer rights in a registered trade mark from a date prior to the date of filing of that trade mark merely because that trade mark may have been used previously. Therefore, the defendants were able to rely on the Section 11(3) defence (use of an earlier right in the course of trade in a particular

This case concerns CASPIAN PIZZA in Birmingham, UK and CASPIAN in Worcester, UK



locality which applies only in that locality) to defeat the infringement claim. In granting the defendant's invalidation action to the CASPIAN registration, the judge held the defendants owned goodwill in CASPIAN through use of the same since 2002 and this goodwill could be used to claim passing off against anyone using CASPIAN for pizza restaurant services. However, the invalidation action to the claimant's device trade mark was rejected.

Appeal

Both parties appealed. In granting the defendant's appeal in respect of the claimant's device trade mark, but rejecting the claimant's appeal concerning the invalidation of the CASPIAN trade mark, the court referred to a UKIPO decision concerning a trade mark for SWORDERS which held that the only requirement in an opposition under Section 5(4)(a) (passing off) is that the opponent has established goodwill in the earlier sign in an identifiable geographical area that would qualify for protection in passing off proceedings. Goodwill which is established in a particular locality will be capable of preventing registration of a national mark.

The court could not see any justification for adopting a different position when the challenge is made post-registration. Although the Trade Mark Act 1994 allows for partial invalidity of a registered trade mark in certain situations, there is no possibility of invalidating a trade mark for just part of the UK. Once registration has occurred, a trade mark cannot be altered (save for the limited provisions allowed under Section 44). Therefore, excluding registration of the claimant's trade marks in Worcester, where the defendants rights existed, was not possible.

Author:

Gemma Kirkland



In short

when relying on unregistered rights under Section 5(4)(a), use does not have to occur nationwide, as long as the requisite goodwill has been established in a particular locality. Where such goodwill has been established, (providing the remaining elements of passing off are also found to exist), a registered trade mark may be successfully invalidated on the basis of such goodwill, irrespective of whether the registered trade mark owner has used its trade mark prior to the date of creation of the defendant's unregistered rights.

Use of a registered trade mark prior to the date of filing does not provide a trade mark owner with rights in the registered mark from the date of first use. The trade mark owner may obtain rights through such use, but these rights will only provide the trade mark owner with unregistered rights – not rights which can support a later filed trade mark registration.

Invalidity and infringement Burgerista Operations v Burgista Bros

Case details at a glance

Jurisdiction: England & Wales

Decision level: IPEC

Parties: BURGERISTA OPERATIONS

GmbH (claimant) and BURGISTA BROS LIMITED, BURGISTA LIMITED, BURGISTA BROTHERS LIMITED, UK PROSPER LIMITED, HAMID REZA MOGHIMI, and HOSSEIN KHETRIYAN (defendants)

Citation: [2018] EWHC 35 (IPEC)

Date: 12 January 2018

Full decision: <http://dycip.com/burgerista>

In *Burgerista Operations v Burgista Bros*, the Intellectual Property Enterprise Court (IPEC) has held that the EU trade mark “BURGERISTA” for restaurant, canteen and bar services is valid and infringed by the sign “BURGISTA” for the same services.

Burgerista and Burgista

The claimant, Burgerista Operations, was an Austrian company operating a chain of 18 burger restaurants across Austria and Germany. It was established in 2012 and registered an EU trade mark for BURGERISTA in class 43 (including restaurants) in 2014.

The defendant was a company which had taken a licence to open twenty restaurants using the sign “BURGISTA BROS” in the UK from a Hong Kongese company. Its first franchise was opened in 2015.

Following the launch of the franchise, the claimant commenced trade mark infringement proceedings against the defendant on the basis of a likelihood of confusion with the trade mark (art. 9(2)(b) of Regulation (EC) 207/2009) and detriment to the reputation of the trade mark (art. 9(2)(c) of Regulation (EC) 207/2009). It fell to the court to decide whether the trade mark was valid and infringed.

Validity

On validity, it was argued that the mark was descriptive. The defendant reasoned that “BURGER” denotes the product and “...ISTA” is a suffix which denotes, among other things, enthusiasm for that which preceded it, similar to barista or fashionista. In support of its position, the defendant relied on the Oxford English Dictionary, Oxford Advanced Learner’s Dictionaries, Urban Dictionary and Reverso (an online translation tool).

The court held that the Urban Dictionary and Reverso were not persuasive, as there was no evidence of how they were compiled. As to the Oxford English Dictionary and Oxford Advanced Learner’s Dictionaries, the court held there was no evidence of the position as at 2014 (the evidence having been compiled in 2017).

As a result, the court concluded that the trade mark was valid.

Burgerista Operations v Burgista Bros at IPEC



Infringement

As to likelihood of confusion, the court appears to have been persuaded by the evidence of the claimant’s Chief Executive Officer, Mr Werner, as follows:

“First, he googled ‘burgerista’. The second entry on the results page consisted of a map of London identifying three restaurants, with their contact details below, all of them [the defendant’s] **Burgista restaurants**. Secondly, he exhibited a page from a website called ‘Ourvintage.Life’ headed ‘Burgista’. It was an entry about one of [the defendant’s] restaurants. There was a hashtag at the bottom: **#burgerista**. Thirdly there was an Instagram page from a blog of someone called Dimitar Popov. This featured a picture of food in a Burgista restaurant with hashtags that included **#burgerista**, **#london** and **#burgista**. Finally there were copies of pages from a blog by people who style themselves ‘Londonistas’ ... On 30 January 2017 two of them posted an item about [the defendant’s] Burgista restaurant in Baker Street. It was headed ‘JANUARY: **BURGERISTA**’. The discussion included this ... ‘We started the year off with a new burger joint we discovered in Baker Street: **Burgerista**...and well, we’re the Londonistas so it seemed like the perfect place to start off this year’s burgers.... Overall...a thumbs up for **Burgerista!**’ (Emphasis added.)

With regard to detriment, it fell to be determined whether the trade mark had a

reputation. The court noted that the reputation of the trade mark was to be assessed on the date on which the “BURGISTA BROS” sign was first used, namely July 2015. It then summarised the jurisprudence on reputation as follows: “it can be concluded that if the market for the goods or services for which a trade mark is registered [extends across the entire public, for example fruit drinks] and the mark is known throughout a member state the size of Austria, this will constitute knowledge of the mark among a significant part of the public of the EU [and] the mark will qualify for the status of having a reputation in the Union.”

Applying this to the facts of the case, the court held that the mark did not have a reputation. It reasoned that: “In July 2015, the trade mark was far from being known throughout Austria. It had not become known outside Austria, save possibly to a very limited extent in Monchengladbach. It was known in two local areas of Vienna, two in Linz, one in Salzburg and one in Pasching. No figure has been attempted for the share of the European Union restaurant business held by the restaurants trade under the mark, but it must have been very small indeed, even if presented as a share of the burger restaurant business. Marketing was largely confined to social media sites, although it is not clear how much of this had been done by July 2015.”

Author:
Antony Craggs



Acacia v Audi and Porsche

The wheel meaning of the repair clause

🔍 Case details at a glance

Jurisdiction: European Union

Decision level: Court of Justice of the European Union

Parties: Acacia Srl v Pneusgarda Srl, in insolvency, Audi AG (C-397/16), and Acacia Srl, Rolando D'Amato v Dr. Ing. h.c. F. Porsche AG (C-435/16)

Date: 20 December 2017

Citation: ECLI:EU:C:2017:992,

EU:C:2017:992, [2017] EUECJ C-397/16 (joined cases C-397/16 and C-435/16)

Full decision: <http://dycip.com/acacia397>

By two joined cases, the CJEU has provided guidance on the scope of the “repair clause” within Article 110(1) of the Community Design Regulation.

The repair clause excludes community design protection for designs which constitute a component part of a complex product for the purpose of the repair of that complex product so as to restore its original appearance.

Designed to ensure customers have access to a competitive market for spare parts for repair purposes, the scope of the repair clause was challenged here in the context of automobile spare parts.

Audi and Porsche design infringement actions against Acacia

Car manufacturers Audi and Porsche brought separate actions against Acacia (an Italian manufacturer of replica wheel rims for cars) in Italy and Germany respectively, essentially seeking a declaration that Acacia’s manufacture and sale of replica wheel rims was an infringement of Audi and Porsche’s registered community designs.

According to the referring court in the Audi case, some of Acacia’s wheel rims were identical to Audi’s wheel rims, however Acacia stamped “NOT OEM” (not made by the original equipment manufacturer) on their wheel rims, and their accompanying documents and information indicated that the wheel rims were sold exclusively for the purposes of repair. In the case of Porsche, ostensibly some of Acacia’s wheel rims were identical whilst others were different sizes and colours to the originals.

In both cases, Acacia invoked the repair clause as a defence, and the national courts referred requests for a preliminary ruling to the Court of Justice of the European Union (CJEU).

Ruling of the CJEU

First, the CJEU considered whether the repair clause could only be used when components of a complex product are dependent upon the shape of the product (as argued by Audi and Porsche), or whether it could also be used for parts such as wheel rims which can be made in many ways as their shape is not determined by the kind of car (as argued by Acacia). The CJEU ruled the latter applied such that the repair clause extends to any component parts regardless of whether the protected design is dependent upon the appearance of the complex product.

In its analysis, the CJEU took into consideration the rationale behind the repair clause, being to avoid captive markets and to prevent consumers from being tied to purchasing external parts from the same manufacturer as the complex product.

Second, the CJEU considered whether the repair clause applied only to parts which are identical to the original or also to standard variants.

The CJEU noted it was common ground that alloy wheels may be protectable by registered designs (subject to novelty and individual character) as they are visible in normal use. A wheel rim, which visibly contributes to the appearance of a car, was considered a component part of a complex product (car) as without them, the car would not be in normal use.

The wording of the Community Design Regulation is that the purpose of the repair is to restore the original appearance of the complex product to when it was put on the market. The CJEU held that the repair clause only applies to visually identical replacement parts and not those differing, for example, in colour/size for customisation purposes.

Finally, the CJEU imposed a “duty of diligence” on the manufacturer or seller of the component parts (as the entity relying on the derogation under the repair clause) to ensure that downstream users comply with the repair clause, that is, to ensure that consumers only use the parts for repair and not



customisation. In particular, the duties include:

1. Clearly and visibly informing downstream users on the product/packaging/ documents that the component part incorporates a third party design and is for the purposes of repair of the complex product to restore its original appearance;
2. Through (for example) contractual means ensuring users comply with the repair clause; and
3. Not selling parts to users where they have reasonable knowledge that the repair clause will not be complied with.

Author:

Jennifer Heath



In short

This case provides some guidance on the repair clause, including that the derogation applies to all component parts if the repair serves to restore the original appearance of the product.

It will be interesting to see how the case is applied by the national courts and the extent to which the ruling applies to other spare parts industries; and how a duty of diligence may be implemented and monitored.

D YOUNG & CO INTELLECTUAL PROPERTY

And finally...

A top up from the General Court Coca-Cola v Mitico

This is the second Appeal to the General Court in relation to the opposition



by Coca-Cola to the Master mark as shown (the first GC decision is reported on our website: www.dyoung.com/knowledgebank/articles/cocacolavitico, March 2015).

The application had been filed in classes 29, 30 and 32 in 2010 and Coca-Cola had opposed on the basis of its earlier registrations featuring the well known Coca-Cola logo marks. The opposition relied upon Articles 8(1)(b) and 8(5). In the evidence supporting the opposition, Coca-Cola showed screen shots from Mitico's website showing how Mitico was using the attacked mark, although the Opposition Division and the Board of Appeal did not take into account that evidence because they found the marks dissimilar. The General Court found that there was a low degree of similarity and directed that the Board of Appeal take the evidence into consideration for Article 8(5).

The Board of Appeal dismissed the opposition again, deciding that the evidence taken from Mitico's website could not support the allegation of free riding because it was not shown that Mitico had presented the goods

as shown on the website in the EU, and, just because a party chose to display goods in a particular way on its website to promote goods in certain territories did not mean that it would promote goods in the same way in the EU.

The court confirmed that the fact that the website did not target EU consumers did not make reference to the website irrelevant as it could serve as a basis for a logical inference; use in countries outside the EU could support a ground that a mark is taking unfair advantage of the reputation of earlier marks in the EU.

The General Court has remained consistent with its previous decision in these proceedings and confirmed that evidence of how an applicant is using a mark outside of the EU "may serve as a basis for a logical inference on the likely commercial use of the mark applied for" in EU opposition proceedings.

Author:
Jackie Johnson



Parties: The Coca-Cola Company (applicant) v EUIPO (defendant) and Modern Industrial & Trading Investment Co. Ltd (Mitico)
Citation: T-61/16
Date: 07 December 2017
Full decision: <http://dycip.com/cocacolavitico>

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