

EU General Court finds EW and WE to be not confusingly similar

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What is the scope of protection for a two-letter trademark? Novagraaf's Frouke Hekker examines the implications of a recent EU General Court ruling.

The holder of the European trademark WE sought to prevent the registration of a figurative mark for the word EW, on the grounds that the marks were confusingly similar, due to visual and phonetic similarities, as well as the similarities between the respective goods for which protection is sought. Both trademarks covered similar fashion-related products. EUIPO's Opposition Division and later its Board of Appeal agreed; however, in its [judgment of 4 May](#), the EU's General Court annulled the EUIPO decisions.

Comparing marks

Likelihood of confusion is a key criteria when assessing the similarity of trademarks. To establish whether there is likelihood of confusion, the visual, phonetic and conceptual similarity will be assessed as well as the goods and/or services involved. This assessment is based on the overall impression given by those marks, account being taken, in particular, of their distinctive and dominant components. A low degree of similarity between the goods or services may be offset by a high degree of similarity between the marks, and vice versa.

Background to the appeal proceedings

EUIPO's Opposition Division found there to be a likelihood of confusion between the trademarks, which the Board of Appeal upheld. Both the Opposition Division and the Board of Appeal stated (in short) that the signs at issue showed significant visual and phonetic similarities, and that there would therefore be a likelihood of confusion within the relevant public (Italian- and Spanish-speaking consumers).

EU General Court judgment

In appeal against the Board of Appeal's judgement, the applicant (the trademark holder of the EU figurative mark EW) argued that the earlier EUTM word mark WE has a limited scope of protection because it 'has little phonetic and visual complexity' and that the differences between the marks are substantial. It further argued that conceptually, WE has a meaning for the English-speaking public, whereas EW is meaningless.

The EU General Court ruled in favor of the applicant, finding that with shorter signs, the relevant public will see differences between the signs more clearly. It also held that as the letters E and W are in different order, there is a low degree of visual and phonetic similarity. With regard to the meaning of WE, the EU General Court observed that, for the Italian and Spanish public which has no knowledge

of English, WE is meaningless and therefore conceptually neutral. For the English-speaking public however, the General Court stated that, in conformity with the argument of the applicant, the marks are conceptually dissimilar.

Based on the above considerations, the General Court annulled the decision of the Board of Appeal in its entirety, finding there to be no likelihood of confusion between the earlier trademark and the trademark applied for.

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