



ITMA Evening Talk CJEU and General Court Decisions* – 2015

(*and one OHIM BoA decision)

Birgit Clark

Birgit.Clark@lockelord.com

24 November 2015

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Pro-Aqua International GmbH v OHIM, T-133/13, 22 January 2015

- GC rejected invalidity application against slogan “WET DUST CAN'T FLY” for “*cleaning products, appliances and related services*” but not including steaming appliances;
- Expression does not describe the goods and services because they do not use water as part of their operation;
- Not a conventional way of describing how the relevant cleaning appliances/tools function so no need to keep free for other traders;
- Invalidity applicant failed to show that the words “dust” and “wet” are commonly used together in the context of filters or cleaning systems;
- Dust is no longer dust when it becomes wet; the two words together give the mark a fanciful and distinctive character, and the expression a degree of originality and certain resonance which setting off a cognitive process in the mind of the relevant consumers effects.

Verlagsgruppe Droemer Knauer v OHIM, R2889/2014-4, 28 May 2015

- DIE WANDERHURE (German: die Hure = prostitute)
- “Contrary to public policy or to accepted principles of morality”?
- Examiner incorrectly focussed only on the second word element without commenting on its first two components, namely the definite article (“die”) and the element “Wander” (in English “to wander”);
- Success of book and film of same name showed that the public took no offense to the content of the book or its title; rather the sign described a social phenomenon that no longer exists;
- Examiner’s decision had confused the descriptive word of a phenomenon with the phenomenon itself;
- If the OHIM examiner had been correct, any thriller containing the word “murder” in its title had to be banned because killings are a crime, and clearly immoral.

Nestlé SA v Cadbury, C-215/14, 16 September 2015

Background: Société des Produits Nestlé v Cadbury UK Ltd ([2013] EWHC 16 (Ch))

- Nestlé's shape TM application opposed by Cadbury; shape had three essential features:
 - (1) Basic rectangular "slab" shape;
 - (2) Presence, position and depth of grooves dividing bar into fingers; and
 - (3) Number of the grooves, which together with the width of the bar, determined the number of fingers.
- Arnold J held that slab feature (1) resulted from **nature of the goods** themselves, Article 3(1)(e)(i) Directive. Features (2), (3) necessary to obtain a **technical result** (Article 3(1)(e)(ii)):
- Referral to CJEU



Nestlé SA v Cadbury, C-215/14, 16 September 2015



Question 1: In order to establish if a trade mark has acquired distinctive character, is it sufficient for the applicant to prove that a significant proportion of the relevant class of people **recognised the mark and associated** it with the applicant's goods, in that if they were asked to consider who marketed the goods bearing the mark, would they identify the applicant; or must the applicant prove that a significant proportion of the relevant class of people rely upon the **mark** (as opposed to any other marks which may also be present) as **indicating origin** of the goods?

- Applicant must prove that the relevant class of persons perceive (=rely upon?!) the goods/services **designated exclusively** by the mark (=shape), applied for as opposed to any other mark (e.g. design element, such as the KitKat word mark) which might also be present. Thus consumers must perceive the **shape per se** as **indicating origin** in its own right;
- Nestlé's previous survey evidence (of the unbranded shape) might thus need to be re-considered;
- NB: Nestle had supplied two surveys, one rejected by Hearing Office and one accepted.

Nestlé SA v Cadbury, C-215/14, 16 September 2015

Question 2: “Where a shape consists of three essential features, one of which results from the **nature of the goods** themselves and two of which are necessary to obtain a **technical result**, is registration of that shape precluded under Article 3(1)(e)(i) (where shape results from nature of goods themselves) and/or Article 3(1)(e)(ii) (where shape of goods necessary to obtain a technical result)?”

- Confirming its earlier decision in Hauck, the CJEU concluded that **at least one objection must apply to the whole shape**;
- In Nestlé's favour (my reading): where one of several “essential features” falls foul of shape exclusions, mark can potentially still be registered provided that all of the other features do not fall foul of the same exclusion;
- Product shapes, as a whole, one or more of the objections apply = cannot be saved with evidence of use.
- None of the objections applies to the whole shape (even if some component elements fall within an objection) = potentially registrable.

Nestlé SA v Cadbury, C-215/14, 16 September 2015

Question 3: “Should Article 3(1)(e)(ii) be interpreted as precluding registration of shapes which are necessary to obtain a technical result with regards to the manner in which the goods are manufacture as opposed to the manner in which the goods function?”

- Article 3(1)(e)(ii) not interpreted as applying to manner in which the goods are manufactured → **even if the shape is necessary because of the way product is manufactured, the sign will only be objectionable on this ground where the shape is necessary to the way in which the product is used or functions;**
- Hearing officer held Article 3(1)(e)(ii) covered both kinds of technical result, wording did not limit to function of goods;
- Pro Nestlé which argued that technical result exclusion only applied where shape is necessary to achieve a technical result;
- Public policy rationale of Article 3(1)(e) to prevent indefinite monopolies over technical solutions or functional characteristics which users are likely to seek in competitor goods, see Hauck (C-205/13) and Lego (C-48/09);
- NB: either way Nestlé still owns CTM for the same shape but does not cover 'chocolate'.

Swatch AG v OHIM, Panavision Europe Ltd, T-71/14, 19 May 2015

- SWATCH vs SWATCHBALL
- Average overall degree of similarity: SWATCHBALL;
- Swatch marks found to have a particularly strong reputation (Article 8(5));
- While it was possible that the specialist public for the goods and services covered by the application in Classes 9, 35, 41 and 42 may also be aware of the earlier SWATCH marks (covering mostly Class 14), this public will not establish a link between the relevant marks because it is very unlikely that the public will encounter goods covered by the relevant marks in the same shops;
- Applicant's (Panavision Europe) goods/services target a specialist public, whereas the goods covered by the earlier marks target the general public;

Swatch AG v OHIM, Panavision Europe Ltd, T-71/14, 19 May 2015

- Need for consumers to make a “link” between the marks in cases where the opponent is relying on a mark with a reputation under Article 8(5) CTMR:
- Factors pro/contra of finding a link:
 - Similarity;
 - Strength of the reputation;
 - Different nature of the goods and service;
 - Different distribution channels;
 - Not interchangeable or competition;
 - Goods and services serve very different purposes;
 - Limited degree of closeness of relevant consumers.

Republic of Cyprus v OHIM , T-292/14, T-293/14, 7 October 2015

- Republic of Cyprus tried to register HALLOUMI (and Greek spelling XΑΛΛΟΥΜΙ) for cheese, milk and dairy products.
- OHIM's BoA refused registration since signs referred to a speciality cheese from Cyprus which directly describe, for the Cypriot public, the kind and geographical origin of the products, Article 7(1)(c) CTMR.

General Court:

- Fact that the Republic of Cyprus owned identical **certification marks** since 1992 no effect on descriptiveness;
- Certification marks could not be used to show that Cypriot consumers do not perceive HALLOUMI as descriptive;
- No public interest in keeping the marks free? Where TM is descriptive, no need to consider potential public interest in keeping the mark free. Important only whether there is a sufficiently direct and specific relationship between the sign and the characteristics of the categories of goods/ services;
- Fact that BoA had previously allowed registration of certification marks with a descriptive character as CTMs was irrelevant → legality of BoA decision assessed solely in light CTMR, not on basis of a previous decision practice.

Nissan Jidosha KK v OHIM, Case T-572/12, 4 March 2015

- Nissan applied for partial renewal of CTM for some goods/services registered before the deadline set by the first sentence of Article 47(3).
- OHIM granted the renewal and advised that goods/classes not covered by the renewal had been “removed from the register”;
- Nissan subsequently tried to renew for goods/services that had been removed before the end of the grace period set down in the third sentence of Article 47(3) but OHIM refused;
- General Court: partial renewal of a mark in some classes does not constitute a partial surrender by inference;
- However, proprietors are not entitled to make successive partial renewals of the same mark for goods/services not covered by initial renewal.

Nissan Jidosha KK v OHIM, Case T-572/12, 4 March 2015

- Renewal during the six month grace period following the expiry of a CTM is only permissible if no renewal request was submitted during the six month period preceding the expiry;
- Wording of the third sentence and, more specifically, the expression "failing", that the possibility of submitting a request for renewal after the expiry of the initial period was conditional on no request for renewal having been submitted during that period;
- Once even a partial renewal took effect under Article 47(5), effect for the world and principle of legal certainty stops additional renewals.

Naazneen Investments Ltd v OHIM, T-250/13, 18 March 2015

- Genuine use of trade mark SMART WATER for beverages;
- Evidential value of the affidavits from the CTM owner's chief executive and an external consultant were lower than had they come from third parties;
- Evidence proving genuine use must take into account the market and class for which the mark is registered. Since the mark covered goods of mass consumption, the number of bottles of water sold (here: 15,552 bottles) and the value of the transactions was too modest to amount to genuine use;
- Some evidence not proof of imminent marketing as it was at the beginning of the five-year period for assessing genuine use;
- Legitimate reasons for non or limited-use must be independent of the trade mark proprietor's control;
- Trade mark owner retains responsibility to arrange alternative manufacturing of the product after the original bottles were contaminated by a third party manufacturer;
- “Commercial difficulty” is not a legitimate reason for non limited use.

Now Wireless Ltd v OHIM, T-278/13, 30 January 2015

- General Court on genuine use of TM covering “access to databases and the internet” in class 42;
- Evidence, including terms and conditions in customer agreements and web pages listing the services provided, demonstrated use of the CTM;
- End-user of the services was the same consumer who wished to access the electronic networks and who relied on all the services for that purpose;
- Court rejected the argument as arbitrary that it would be necessary to divide the Class 42 services (“electronic network access services”) into sub-categories since the relevant consumer would rely on all services as “a bundle” for the overall purpose of accessing electronic networks;
- Owner can rely on use by its licensee, which was also a group company, as proof of genuine use;
- Use of the CTM “In London and the Thames Valley area” deemed sufficient to show genuine use in the EU; use included a radio advertising campaign.



TVR Automotive Ltd v OHIM, TVR Italia Srl, T-398/13, 15 July 2015

- Rejection of claim that BoA should have taken into account the **findings** of the Cancellation Division in related proceedings that there had been genuine use of the earlier CTM;
- Here: opposition and revocation were separate procedures, the subject matter of which was not entirely identical;
- Five-year periods for genuine use may be different, depending on filing dates. Nonetheless BoA had taken into account the Cancellation Division's decision on genuine use where the periods overlapped.
- Market with relatively low demand (expensive cars), but internet articles and catalogues proved marketing in the UK in the relevant five year period, despite a period of insolvency of the UK factory.
- Later publications showed discussion in anticipation of a revival of production and sale.

TVR Automotive Ltd v OHIM, TVR Italia Srl, T-398/13, 15 July 2015

- Genuine use will depend on the characteristics of the goods/services concerned on the corresponding market: not all proven commercial exploitation can therefore automatically be deemed genuine use;
- Account must be taken of the commercial volume of all the acts of use, on the one hand, and the duration of the period in which those acts of use occurred, and the frequency of those acts, on the other;
- The sector in which the mark is being used can be of relevance;
- No requirement to prove use in each of the relevant five years, instead substantial use in the five year period seen as a whole was deemed to be sufficient;
- Purpose of the rules on genuine use is not to assess commercial success, review the economic strategy of an undertaking, or restrict trade mark protection to large scale commercial use.

Tilda Riceland Private Ltd v OHIM, T-136/14, 30 September 2015

- General Court annulled opposition decision by OHIM's BoA relating to the law of "extended passing off", which can be used to protect goodwill in a name which is distinctive for a class of goods where goodwill is shared between a number of traders;
- Tilda opposed a CTM application relying on earlier (unregistered) sign "BASMATI", used by Tilda and other traders;
- Article 8(4) does not require the owner of the earlier right to have marketed the goods in the territory concerned, enough if used by others;
- GC confirmed Article 8(4) CTMR needs to be interpreted broadly can be applied to signs which are used by a number of traders;
- To be classified as a distinctive element relevant to Article 8(4) CTMR, sign does not necessarily have to indicate the commercial origin of the goods in relation to which it was used which would eliminate signs used by more than one trader;
- Identifying geographical origin, special qualities, or characteristics are also valid functions for Article 8(4) CTMR.

Iron & Smith v Unilever NV, C-125/14, 3 September 2015

- Article 4(3) Directive: trade mark should not be registered if it is similar to an earlier CTM which has a reputation in the Community and where the use of the later trade mark would without due cause take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier CTM;
- Application for Hungarian figurative trade mark “be impulsive”. Unilever opposed based on its similar CTM “IMPULSE”;
- Did Unilever's for IMPULSE have sufficient reputation? 5% market share in the UK and 0.2% in Italy
- If the reputation of an earlier CTM is restricted to a single member state, then this does not need to be the same member state where the opposed national application has been filed;
- CJEU referred to *PAGO International v Tirolmilch* confirming that reputation established **in a single Member State** can be “a reputation in the Community” under Article 4(3) Directive;

Iron & Smith v Unilever NV, C-125/14, 3 September 2015

- If earlier CTM does not have a reputation among the relevant public in the **member state** of the opposed application, the CTM proprietor should demonstrate that a commercially significant part of relevant public in the member state (here: Hungary) is familiar with the CTM that they make a connection with the opposed application; and that there is actual (or a serious risk of) damage;
- A national trade mark application may be successfully opposed by an earlier CTM with a reputation in a "substantial part of the EU", with reputation based in other member state(s) (here: Italy and UK) to that the national application has been filed (here: Hungary);
- One Member State can be considered a "substantial part" of the EU
- Reputation need not be in the Member State of the new application provided that a commercially significant part of the public there make a connection between the two marks;
- Case law on "genuine use" not relevant for question of reputation.


Logistics BV v Bacardi, C-379/14, 16 July 2015

- Article 5 Directive: trade mark owner can oppose third party who places its branded goods under a “duty suspension arrangement” after goods have been introduced into the EEA without his consent and released for free circulation;
- Distinguished from *Nokia -vs- HMRC* which concerned goods not yet released for free circulation in the EEA;
- The terms "using" and "in the course of trade" refer not only to immediate relationships between a trader and a consumer;
- Parallel importer's actions in importing BACARDI bottles into the EEA without Bacardi's consent, placing them under the duty suspension arrangement, subsequently detaining them in a tax warehouse until the payment of import duties and release for consumption, **deemed "use in the course of trade" under Article 5(1) Directive**;
- However, the mere provision of warehouse services does not constitute “use” of the mark.



Logistics BV v Bacardi, C-379/14, 16 July 2015

- Different: status of goods still under a suspensive customs arrangement (i.e. external transit procedure or in a customs warehouse) where a trade mark owner's rights are limited;
- To obtain remedy for infringement (“destruction of the goods”), owner must prove that goods would infringe an EU IP right applicable if released onto the market and that release into circulation in the EU is envisaged;
- **Community Trade Mark Regulation and Trade Marks Directive** will change the rules on transit goods so that trade mark owners will be entitled to prevent the bringing into the EU of counterfeit goods that are not being released for free circulation there, unless the holder of the goods can show that the trade mark owner is not entitled to stop the marketing of the goods in the final destination country.

BGW Beratungs-Gesellschaft Wirtschaft mbH v Bodo Scholz, C-20/14 of 22 October 2015

-  **vs BGW BUNDESVERBAND DER DEUTSCHEN GESUNDHEITSWIRTSCHAFT** (in English: German Federal Association for Businesses in the Healthcare Sector)
- Referral from the German Federal Patent Court;
- **CJEU**: in case of identical/similar goods/services, LOC possible between earlier TM of average distinctiveness consisting of a letter sequence (here: BGW), if distinctive and dominant element and reproduced in later mark combined with a descriptive combination of words where initial letters of sequence correspond with acronym (here: **BUNDESVERBAND DER DEUTSCHEN GESUNDHEITSWIRTSCHAFT**);
- National court to decide on the overall impression made by the later mark and the circumstances of case;
- Addition of sequence on its own does not prevent a likelihood of confusion;
- Q to ask : will public establish a “link”? Will sequence might be perceived and remembered separately in respect of the later mark, etc.;
- Will elements of later mark, taken as a whole, form a separate logical unit with a different meaning from that of the elements taken separately?


***Reiner Appelrath-Cüpper Nachf. GmbH v OHIM, T-60/13,
23 September 2015***

-  VS 
- No likelihood of confusion between "AC" and various earlier marks consisting of letters "A" and "C" along with the words "ANN CHRISTINE“;
- Goods in most of classes (goods relating to items of apparel, fashion accessories, relevant public =Germany) were identical, some differences in one class with remainder of the goods covered in this class identical;
- Low degree of visual similarity between the marks;
- Impression given by the application is that of a typographical construction, whereas the earlier marks appear to be more of a geometric construction;
- Application is for the sole word element “AC”, whereas earlier marks are likely to be pronounced by the relevant public as the full name of the brand;
- GC annulled decision BoA


Alexandra Dellmeier v OHIM, T-641/14, 24 September 2015

- “LEXDELL” vs earlier mark “DELL”;
- Whether or not the relevant public would have understood the additional component of the applied for mark, "LEX" (“law”), the common element "DELL" could not be considered visually or conceptually negligible in the context of the overall assessment of the applicant's mark and also gave rise to a low degree of phonetic similarity;
- Visual comparison: certain degree of similarity;
- Low degree of phonetic similarity;
- “Unfair advantage” due to degree of closeness between “legal services in respect of intellectual property” and the technology which forms the subject-matter of the intellectual property for which Dell is known.


Bankia, SA v OHIM, T-323/14, 17 September 2015

- BANKY for “*financial and banking services*” vs  for various goods and services, including “*financial, banking, insurance and real estate services*”;
- Visually, phonetically and conceptually similar;
- Likelihood of confusion in respect of services related to financial and banking services, including insurance services.
- No likelihood of confusion in respect of “real estate services”: while use of real estate services may require the use of financial and banking services, it could not be claimed that they were so intrinsically linked that consumers would consider them to have the same commercial origin.

BH Stores BV v OHIM, T-657/13, 2 July 2015

-  vs ALEX
- Application covering “*children’s bath toys*” and “*children’s educational and developmental toys*” vs earlier mark covering “*sporting articles*”;
- Different intended purpose of goods, despite possibility of some overlap;
- Goods non-competing and nature of goods different: toys have lower weight, are smaller and generally of lower price; usually sold in different specialist shops or shop departments;
- Sports articles intended specifically for physical fitness, whereas toys are principally intended to entertain and (here also) to educate


Alpinestars Research Srl v OHIM, T-521/13, 7 July 2015

- A-STARS vs  covering identical goods, including clothing
- General Court found that OHIM BoA erred that there was a low degree of visual similarity;
- Dominant element of application “ASTER”;
- Marks coincide in their first three letters and in their fifth letters, which are in the same positions; vowel ‘a’ and the consonant ‘s’ placed in fourth and sixth position respectively vowel ‘e’ in fourth position;
- Average degree of visual similarity, high degree of phonetic similarity but no conceptual similarity;
- Conceptual dissimilarity between the signs (due to various possible meanings of "stars" and "aster") was insufficient to offset the visual and phonetic similarities so that there was likelihood of confusion.


The Smiley Company v OHIM, T-352/14, 15 July 2015

- HAPPY HOURS vs HAPPY TIME;
- Application for “*jewellery and business administration*”, earlier mark for “*jewellery retail and repair services*”;
- General similarity between goods and the retail services which affect them;
- Services generally offered in the same places as those goods, so that consumers might think that the retailer had liability for the manufacture of the goods it was selling, or even that it was itself the manufacturer;
- Low degree of phonetic similarity and certain degree of visual similarity;
- High degree of conceptual similarity since both trade marks refer to the state of being happy over an unspecified period of time;
- HAPPY HOURS mark did not bear a promotional meaning, as watches and jewellery have not connection with the drinks trade which habitually uses phrase;
- Overall similarity and likelihood of confusion.

dm-drogerie markt GmbH & Co. KG v OHIM, T- 662/13, 25 June 2015

- dm vs 
- Specification partly identical and partly similar;
- Court not convinced that the relevant public's perception of the figurative mark would be influenced by the fact that the letters "d" and "m" represented the initials of the trade name of its registrant: Diseños Mireia, SL.
- Even if trade name had been widely known and used alongside the figurative mark, this would be irrelevant for the purposes of a comparative assessment of the marks at issue → no visual similarity;
- Public might see the letter "M", unlikely that it would attempt to pronounce the mark due to its very specific graphic form → no phonetic similarity
- Marks could not be compared conceptually as neither had any meaning.


Giovanni Cosmetics, Inc. v OHIM, T- 559/13, 3 June 2015

- GIOVANNI vs 
GIOVANNI GALLI
- Goods (cleaning and cosmetic products) were partly identical/similar;
- Average phonetic similarity but low visual and conceptual similarity;
- Visual similarity plays a very important role when assessing the likelihood of confusion for these particular goods no likelihood of confusion;
- Two word elements of Application of equal distinctiveness;
- Drawing of a duck as important as the combined word elements as it had no connection with the goods, contributes significantly to a finding of a low degree of conceptual similarity;
- Earlier mark = average degree of distinctiveness, but only shared one of three elements with Application;
- Due significance of other two elements → no likelihood of confusion.

AgriCapital Corp. v OHIM, T-514/13, 10 June 2015

- AGRICAPITAL, AgriCapital vs AGRI.CAPITAL;
- “*Real estate management, brokerage services and building promoter services*” vs. “*financial services*”;
- Nature, intended purpose and method of use of the services covered by both of the marks were dissimilar, despite all falling under Class 36
- Consumers would perceive real estate agents/developers as being clearly separate from banks and financial institutions and that they offered products and services which were not substitutable;
- Opponent argued OHIM BoA failed to examine whether the services in question were complementary but GC agreed with BoA that although real estate affairs often required financing, it was not enough to show that there was such a close link between them and financial services so as to make the relevant public think that those services may be performed by the same undertaking (particularly high degree of attention).

Skype Ltd v OHIM, T-183/13, T-184/13 T-423/12, 5 May 2015

- SKY vs 
- Skype argued that no similarity due to a “secondary meaning” SKYPE had acquired for the goods and services for which they were registered;
- GC: secondary meaning “*nothing other than the distinctiveness of the sign acquired through use*”. If SKYPE had become synonymous with the goods and services provided with it, this would make it unsuitable for registration as it would be deemed to be descriptive;
- Surprising decision since this could be said of any trade mark which is distinctive for goods or services;
- Further, peaceful coexistence of “only 22 months”, fact that goods/services were not part of Sky’s core business and that Sky had not previously brought any infringement proceedings against Skype did not rule out a possible likelihood of confusion.

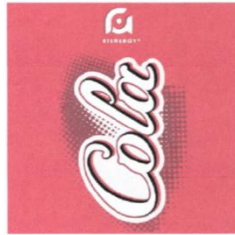
The Royal County of Berkshire Polo Club Ltd v OHIM, T-581/13, 26 March 2015



-
- Marks visually, aurally and conceptually similar. Significant conceptual due to playing of polo.
- Inherent distinctiveness significantly diminished in respect of those Class 18 goods that more closely associated with polo playing, that is "whips, harness and saddlery".
- "Whips, harness and saddlery" more likely to be purchased with the help of a specialised seller with whom the purchaser may speak, increasing the importance of the aural similarity, compared to other goods were of the type to most likely be sold in self-service stores, where the visual aspect of the marks has greater significance.

Intermark v OHIM, T-384/13, 18 March 2015

- Coca-Cola



- All covering goods, including drinks, and business administration
- Visual, aural and conceptual similarity (and similar fonts);
- Emphasis upon visual similarity: due to reputation the assessment of LOC with the earlier mark had to take into account the fact that the dominant element "Cola" reproduced one of the two word elements in the earlier mark, and was depicted in the signs in white cursive script on a red background;
- Similar reasoning applied to the comparison with the earlier word CTM, despite the fact that the marks were visually less similar and, in the context of business administration, the relevant public consisted of professionals.



***Bayer Intellectual Property GmbH v OHIM, T-227/13,
27 February 2015***

- INTERFACE vs INTERFOG both for preparations for destroying plants;
- Relevant public: general consumers and agricultural specialists in the EU, who would have a high level of attention due to the toxic nature of the goods;
- Average degree of visual and phonetic similarity, but disagreed with the BoA they were neutral conceptually;
- “Interface” was a technical term used particularly in the field of information technology, with a semantic content not only in English, but also in other EU languages;
- “Interfog” had no conceptual content, there was a “certain conceptual difference” which could escape the attention of the relevant public since the word “interface” related to an abstract idea;
- Goods identical - in order to avoid all likelihood of confusion, this must be offset by a high degree of differences between the marks.



Bial-Portela & Ca, SA v OHIM, T-366/11, 3 March 2015

- ZEBEXIR vs ZEBNIX covering identical Class 3 and 5 goods;
- Relevant public average consumer in the EU;
- General Court: average degree of visual similarity due to common first part of the words (“zeb”) and degree of phonetic similarity - although there were some differences - as each mark was composed of three syllables, with the first syllable identical and the second ("be" vs. "bi") was close in sound;
- When seeing the marks, the relevant public, with perhaps an imperfect recollection, could well believe that they came from the same undertaking or economically linked undertakings. Consequently, there was the requisite likelihood of confusion.

El Corte Inglés, SA v OHIM, T-372/12, 4 February 2015

- PRO MOUNTAIN, B-PRO, PRO OUTDOOR, 
vs 
- All covering “*bikes, folding bikes, electric bikes and bike accessories*”;
- Low degree of visual and phonetic similarity but conceptually different;
- Considerable visual, phonetic and conceptual differences between APRO and PRO MOUNTAIN and PRO OUTDOOR given the elements “mountain” and “outdoor”;
- Higher than average level of attention when purchasing the goods concerned, as bikes are relatively expensive and purchased infrequently;
- Consumers were unlikely to believe that the goods came from the same undertaking or from economically related ones in spite of the identity of the goods → no likelihood of confusion.

Türkiye Garanti Bankası, AS v OHIM, T-33/13, 5 February 2015

-  VS 
- Both covering range of business services;
- Wrong to conclude that the visual, phonetic and conceptual differences outweighed the common element BONUS, which only had a weak distinctive character in relation to the services;
- At least average degree of phonetic similarity
- Conceptually similar for part of the relevant public, whereby word bonus relates to an economic advantage or benefit.
- Wrong that the target public consisted of professionals who devoted an elevated degree of attention to the marks, services were directed at both the general public and business.

Birgit Clark

Birgit.Clark@lockelord.com

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