



General Court confirms lack of likelihood of confusion between marks representing a head

Marcella Florio and Marilina Pansini

Bugnion SpA

25 November 2022



EUROPEAN UNION

Legal updates: case law analysis and intelligence

- **Société Elmar Wolf** opposed the registration of a figurative mark representing a head based on earlier figurative marks representing the head of a canine
- The court agreed with the EUIPO that the signs were visually similar at most to a low degree
- It was unlikely that the average consumer would be capable of spontaneously associating the opposed sign with the head of an animal

In [*Société Elmar Wolf v European Union Intellectual Property Office*](#) (EUIPO) (Case T-596/21), the General Court (Ninth Chamber) has dismissed the action brought by Société Elmar Wolf ('the applicant') seeking the annulment of the decision of the Fourth Board of Appeal of the EUIPO of 5 July 2021 (Case R 2834/2019-4) related to the opposition between the applicant and Fuxtec GmbH.

Background

Fuxtec obtained an international registration designating the European Union in respect of the following figurative sign, covering goods and services in Classes 4, 7, 8, 12 and 35:



The applicant filed a notice of opposition in respect of all the claimed goods and services on the basis of several earlier marks, including two figurative marks consisting of the following figurative element in Classes 7, 8 and 35, and on which the Opposition Division focused its analysis:



The applicant invoked Article 8(1)(b) of Regulation 207/2009.

The opposition was rejected by the Opposition Division, which ruled out the existence of a likelihood of confusion between the signs. The decision was confirmed by the Board of Appeal.

The applicant challenged the Board of Appeal's decision before the General Court.

Decision

The court had to decide whether the Board of Appeal had infringed Article 8(1)(b) of the regulation.

Comparing the marks at issue, the General Court held that the Board of Appeal was right in finding that the conflicting signs were visually similar at most to a low degree. The court pointed out that the earlier marks consisted of the representation of the head of a canine. The representation of the head of a canine in the earlier marks was very naturalistic and detailed, capable of being perceived as a wolf, a fox or a dog, with a menacing expression.

By contrast, as already pointed out by the Board of Appeal, the shape represented in the contested sign was rather abstract. The court stated that the representation of a head in the contested sign was obviously less realistic and considerably more stylised than the silhouette illustrated in the earlier marks, which represents some of the main attributes - a slightly open mouth and a menacing expression - of the representation of the head of a canine.

In the opinion of the General Court, it was unlikely that the average consumer, who normally perceives a mark as a whole and does not carry out an analysis of its details at the time of purchase, would be capable of spontaneously associating the contested sign with the head of an animal, or even with the head of a canine or of a specific kind of animal. Such an association would require, according to the court, a mental effort on the consumer's part that went beyond that expected at the time of purchase.

Such considerations also affected the conceptual comparison between the marks. While the earlier signs evoked the concept of the head of a canine, the opposed mark was instead abstract and, even though it may evoke the head of an animal, was not therefore liable to be associated with the same concept of the head of a canine by the relevant public. The signs were thus found conceptually dissimilar.

Since the marks at issue were figurative marks, a phonetic comparison between them was not possible.

On the basis of the above considerations, even assuming an identity between the goods, the court found that the Board of Appeal had been right in finding that no likelihood of confusion existed between the conflicting signs.

The General Court thus dismissed the action.

Marcella Florio

Author

marcella.florio@bugnion.eu

Bugnion SpA

Marilina Pansini

Author

marilina.pansini@bugnion.eu

Bugnion SpA

Copyright © Law Business Research Company Number: 03281866 VAT: GB 160 7529 10