

## General Court scrutinises complementarity of Class 33 goods and Class 35 services

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- The mere fact that the mark applied for covered not only services in Class 35, but also goods in Class 33, did not demonstrate that there was a close link between them
- Complementary goods and services are those between which there is a close connection
- The mere use of a service in the production or packaging of a final product does not imply a complementary relationship

In a decisive (or divisive?) judgment dating 20 December 2023, the General Court, in [Case T-655/22](#), has addressed a contentious issue relating to the comparison of goods and services - in particular within the wine sector. The judgment delves into the criteria for assessing similarity, providing clarity on a matter that has been widely debated.

### Background

On 11 February 2020 Mr Giramondi and Mr Antonelli applied for the registration of the mark depicted below as an EU trademark with the European Union Intellectual Property Office (EUIPO):



On 7 May 2020 Torre Oria SL, the owner of the trademark depicted below (No 18154404), registered on 1 October 2020 for “wines, sparkling wines”, filed a notice of opposition, focusing on certain goods in Classes 33 (“alcoholic beverages [except beers]; alcoholic preparations for making beverages”) and services in Class 35 (“advertising; business management; business administration; office functions”):



The grounds for opposition were those set out in Article 8(1)(b) of [Regulation 2017/1001](#). On 17 March 2022 the Opposition Division of the EUIPO partially upheld the opposition for “alcoholic beverages [except beers]” in Class 33, citing a likelihood of confusion, but rejected it for the other goods and services in Classes 33 and 35. An appeal was lodged on 13 May 2022.

The Board of Appeal partially annulled the Opposition Division's decision. It upheld the rejection of the opposition for “advertising; business management; business administration; office functions” in Class 35, but annulled the decision insofar as the opposition had been rejected for “alcoholic preparations for making beverages” in Class 33 due to a likelihood of confusion.

Torre Oria sought to annul this decision, specifically concerning the rejection of the opposition for services in Class 35.

## The focal point of the case: the comparison between Class 33 goods and Class 35 services

The application for registration of the mark in Class 35 claimed “advertising; business management; business administration; office functions” and was not limited to the wine sector. However, as Torre Oria argued, the trademark contained an obvious reference to wine and, therefore, would indicate that the services covered by the mark applied for were specifically intended for the wine sector.

Nonetheless, the General Court stated that, “for the purposes of assessing whether there is a likelihood of confusion, only the description of the goods and services in respect of which registration of the trademark was sought is relevant”. The court also emphasised that providing services for the promotion, advertising, management or administration of goods, such as wines in Class 33, does not necessarily establish a link between them. The mere fact that the trademark applied for covered not only services in Class 35, but also goods in Class 33, did not demonstrate that there was a close link between them. Services in Class 35 could extend to a vast range of goods of different kinds, as indicated in previous judgments.

The court concurred with the Board of Appeal that the services in Class 35 differed significantly from the goods in Class 33, considering their nature, intended purpose and method of use. It rejected the argument that the consumer would assume the existence of a link between the goods and services.

Moreover, the court highlighted the absence of shared distribution channels between the goods and services, reinforcing the conclusion that consumers would not perceive them as being sold or supplied in the same places. The concept of complementary goods or services was also emphasised: in the court's opinion, *complementary* goods or services are those between which there is a *close connection*, in the sense that one is indispensable or important for the use of the other with the result that consumers may think that the same undertaking is responsible for manufacturing those goods or for providing those services.

Examining consumer expectations, the court stressed the importance of the economic reality of the current market. It clarified that the mere use of a service in the production or packaging of a final product does not imply a complementary relationship.

## Comment

The decision is aligned with the position of the EUIPO and member state IP offices.

Notably, the general title in Class 35 lacked specifications related to the wine sector. It may be argued that, if services had been requested for the sale of wine, an average level of affinity with products such as “wine and sparkling wine” could have been found.

This assessment could similarly be applied to the other services in Class 35 if they were explicitly intended for the wine sector (see Opposition No B 2 676 420 and the decision of the First Board of Appeal of the EUIPO in [R 2336/2018-1](#)).

In conclusion, although the opposed mark was evidently intended for the wine sector, the application of the strict parameters of the EU authorities and case law led to an arguably paradoxical outcome.

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