

**No likelihood of confusion between GREEN'S and AMBAR-GREEN for beer**

**Examination/opposition  
International procedures**

**European Union - Casalonga Avocats**

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In *La Zaragozana v Office for Harmonisation in the Internal Market* (OHIM) (Case T-197/14, May 21 2015), the General Court has upheld the decision rendered by the Fifth Board of Appeal of OHIM on January 21 2014 that there was no risk of confusion between the figurative mark GREEN'S and the mark AMBAR-GREEN.

On March 31 2009 Charles Cooper Ltd filed an application for registration of the following sign as a Community trademark in connection with "gluten-free and wheat-free beer, ale, lager, stout and porter" in Class 32 of the [Nice Classification](#):



On September 29 2009 La Zaragozana SA filed a notice of opposition pursuant to Article 8(1)(b) of the [Community Trademark Regulation](#) (207/2009) on the basis of its earlier Spanish word mark AMBAR-GREEN covering goods in Class 32, namely, beers.

The opposition was upheld and an appeal was filed. By its decision of January 21 2014, the Fifth Board of Appeal of OHIM upheld the appeal and reversed the opposition decision. The board considered that, despite the identical nature of the goods at issue, there were sufficient differences between the marks to exclude any likelihood of confusion. In particular, the board found that there was a low degree of visual and phonetic similarity and an absence of conceptual similarity between the mark applied for and the earlier mark.

La Zaragozana filed an appeal before the General Court on the basis of a single plea, alleging infringement of Article 8(1)(b) of the regulation. La Zaragozana argued that, from a visual point of view, when a mark consists of both word and figurative elements then the verbal element should be given a major importance. From a phonetic point of view, it contested the Board of Appeal's finding as to the pronunciation of the word 'green's' and took the view that the apostrophe followed by the letter 's', not existing in Spanish grammar, would not mean anything to the relevant public - in the present case, Spanish consumers.

Further, La Zaragozana considered that the term 'green' had distinctive character in connection with beers - that is, "a beer without alcohol which it is recommended be consumed at a temperature of five degrees" and which is used commercially by La Zaragozana to sell the beer AMBAR followed by a sub-brand. In view of the above, La Zaragozana maintained that consumers would identify the goods under the earlier trademark with the mark GREEN and that, taking into account the degree of similarity between the signs AMBAR-GREEN and GREEN'S, the registration of the opposed mark would create confusion in the minds of reasonably and well-informed consumers.

The General Court confirmed the Board of Appeal's finding concerning the relevant public (which consisted of Spanish average consumers) and the identity of the goods.

In respect of the similarity of the signs, the court confirmed the board's decision, taking the view that the only element common to the marks was the sequence of letters 'G', 'R', 'E', 'E' and 'N', and that all the other elements of the signs at issue were different. Further, it stated that the appearance of the whole of the trademark applied for was reminiscent of a traditional pub sign.

La Zaragozana argued that the figurative element of the mark applied for was less important than the verbal element which, in this case, was identical to the word 'green' contained in the earlier mark and that, accordingly, the two marks were visually identical.

In this regard, the court reiterated that, in a complex mark, the figurative element may occupy a position equivalent to the verbal element (see *Inter-Ikea v OHIM* (T-112/06), Paragraph 48 and the case law cited). On the other hand, it held that, according to the case law, even where two trademarks are composed of highly similar verbal elements, that fact does not, by itself, support the conclusion that there is a visual similarity between them. The presence, in one of the signs, of figurative elements set out in a specific and original way can have the effect that the overall impression conveyed by each sign is different (*Eckes-Granini v OHIM* (T-487/12), Paragraph 44).

The court also noted that the earlier mark consisted of a compound word which, with the exception of the letter sequence 'G' 'R' 'E' 'E' 'N', had no visual similarity to the mark applied for, and that according to case law, the first part of a trademark, in this case the word '*ambar*', normally has a greater visual impact than the final part.

In view of the above, the court confirmed that there was a low degree of visual similarity between the two marks.

Concerning the phonetic similarity, the court confirmed that the two marks had only the monosyllabic word 'green' in common (the second element of the earlier mark), with the exception, however, of the final apostrophe followed by the letter 's' which, in its view, could be pronounced by Spanish consumers.

On this basis, it held that the earlier mark would be pronounced by Spanish consumers in three syllables ('am', 'bar' and 'grin'), while the mark applied for would be pronounced as a single syllable ('grins') by the relevant public.

Therefore, the court confirmed, contrary to what was claimed by La Zaragozana, that the fact that the apostrophe followed by the letter 'S' does not exist in Spanish grammar was not likely to make the two marks identical from a phonetic point of view because of the differences between them in the number of syllables, their rhythm and their intonation.

As regards the conceptual similarity of the signs, the court confirmed that the two marks were not similar. In this respect, the Board of Appeal had stated that the word '*ambar*' could be translated as 'amber', defined in Spanish as being a hard, translucent, yellowish, fossilised resin originating from extinct coniferous trees from the Tertiary Period. By contrast, the word 'green' relates, in the current language of the food market and marketing in general, to organic products. Nothing was said about the possibility that the term '*ambar*' could also refer to the colour of the beer.

La Zaragozana asserted, however, that the word '*ambar*' represented its house mark and that it frequently uses a sub-brand depending on the specific characteristics of each beer. Thus, the generic mark AMBAR also formed part of, among other things, the various sub-brands AMBAR 1900, AMBAR ESPECIAL, AMBAR MANSANA, AMBAR LEMON and AMBAR PREMIUM.

In view of the above, the court confirmed that such frequent use of a second verbal element qualifying the mark AMBAR supported the notion that the relevant public would understand the word '*ambar*' as being the principal element permitting recognition of the mark and the word 'green' as a type of beer under the AMBAR mark.

Therefore, the court confirmed that the Board of Appeal had not erred in finding that the earlier mark AMBAR-GREEN would be perceived by the relevant public as a line of organic beers under the AMBAR mark.

Further, the court considered that, although part of the relevant public would not understand the possessive meaning of the mark GREEN'S as held by the Board of Appeal, it was likely that the average consumer would perceive the mark GREEN'S as a mark of Anglo-Saxon origin without any particular meaning, on the basis of, on the one hand, the presence of the apostrophe followed by the letter 's' unknown in Spanish grammar, and on the other hand, the figurative element, such as the curved black ribbon, conveying the idea of a traditional public house.

The court found, however, that it was unlikely that the Spanish public would attribute the same organic meaning to the verbal element 'green' accompanied by the apostrophe followed by the letter 'S' in the mark applied for. Therefore, the court confirmed that the Board of Appeal was right to hold that no conceptual similarity existed between the marks at issue despite the presence of the word 'green' in both marks.

This decision confirms that, even if the likelihood of confusion is assessed based on the overall impression created by the marks, each component is carefully considered in the comparison on the signs. In this regard, 'Green's' was considered to be different to 'Green' on the basis of their different meaning and pronunciation. Further, the graphical element in the mark applied for and the additional element '*ambar*' at the beginning of the earlier mark were sufficient to exclude a likelihood of confusion, despite the identity of the products.

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