Blow for Société du Tour de France in TOUR DE X opposition

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27 June 2024

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EUROPEAN UNION
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- **The EUIPO dismissed Société du Tour de France's opposition against TOUR DE X in Classes 25, 28 and 41 based on the earlier TOUR DE FRANCE marks**
- **The General Court confirmed that the common word element 'tour de' had very little, if any, distinctive character and was not dominant in any of the signs**
- **Even if the reputation of the earlier marks were exceptionally high, the relevant public would not make a mental connection between the signs**

On 12 June 2024, in Case T-604/22, the General Court has dismissed the appeal filed by French company Société du Tour de France ('the opponent') against the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) in a dispute with German gym company FitX Beteiligungs GmbH ('the applicant').

Background

On 11 August 2017 the opponent opposed the following EU trademark (EUTM) application (No 016701039) in Classes 25, 28 and 41 in the name of FitX:

TOUR DE X

The opponent relied on five earlier French and EU word marks for TOUR DE FRANCE and LE TOUR DE FRANCE, and on the earlier figurative EUTM (No 3530557) depicted below:

The opposition was based on Article 8(1)(b) (likelihood of confusion) and Article 8(5) (earlier mark with a reputation) of **Regulation 207/2009** (now **Regulation 2017/1001**).

After the Opposition Division of the EUIPO rejected the opposition, the opponent filed a notice of appeal before the Board of Appeal.

The board, however, dismissed the appeal, considering that there was no likelihood of confusion and that the contested application was not likely to take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier marks.

The opponent filed a further appeal before the General Court.

Decision

Likelihood of confusion

The General Court agreed with the Board of Appeal's assessment of the distinctive and dominant elements of the signs, holding that the common word element 'tour de' had very little, if any, distinctive character and was not dominant in any of them. To the contrary, it considered that the large, bright orange letter 'X' in the contested application constituted its dominant element and was clearly distinguishable from the element 'tour de' represented in a smaller black font.

The court further agreed with the board that, due to the weak distinctive character of the common terms 'tour de', the contested application had only a low degree of similarity with the earlier marks.

On a conceptual basis, it considered that the earlier marks referred to a specific cycling competition in France: the *Tour de France*. In contrast, in the contested application, although the element 'tour de' was likely to be understood as a reference to a competition, the interpretation of the meaning of 'X' was left entirely open. To the extent, however, that part of the relevant public could perceive the contested application as referring to a cycling competition, the court found that there was a low degree of conceptual similarity.

Therefore, the court held that, given the weak distinctive character of the only common element 'tour de' and the low degree of similarity between the signs, the relevant public would not confuse the marks in question, despite the identity and similarity of the goods and services and the enhanced distinctiveness acquired through use of the prior marks for services relating to the organisation of cycling competitions in Class 41.

Earlier marks with a reputation

The General Court agreed with the board's findings that the reputation of the earlier marks did not extend to the elements 'tour de' shared by the parties' signs.

Further, despite the common expression 'tour de', the signs at issue were similar only to a low degree. In addition, 'tour de' is commonly used in the context of cycling competitions and has therefore a very weak distinctive character. The court thus held that, even if the reputation of the earlier marks were exceptionally high, the relevant public would not make a mental connection between the earlier marks and the contested application. Consequently, the use of the contested application was not likely to take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier marks.

Comment

This is a particularly severe decision. While it is true that the earlier marks have little intrinsic distinctive character, they nonetheless benefit from an exceptional, worldwide and long-standing reputation. In light of the similarity of the goods/services, this level of renown could have been considered sufficient to offset the low degree of distinctive character of the earlier marks.

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