

**Figurative elements found to be insufficient to render mark distinctive
European Union - Casalonga Avocats**

**Examination/opposition
International procedures**

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In *Research and Production Company "Melt Water" UAB v Office for Harmonisation in the Internal Market (OHIM)* (Case T-69/14, January 14 2015), the General Court has confirmed a decision of the Fifth Board of Appeal of OHIM considering that the figurative trademark depicted below was descriptive in connection with Class 32 goods.



In its decision of November 26 2013, the Board of Appeal had confirmed the examiner's rejection of the application, considering that:

- the relevant English-speaking consumers, when confronted with the word elements 'melt water original' to designate goods in Class 32 ("beers; mineral and aerated waters and other non-alcoholic beverages; fruit beverages and fruit juices; syrups and other preparations for making beverages"), would immediately understand that the goods covered by application are based on natural and pure melted glacier water, or that the content of such goods is based on melted water; and
- the figurative elements of the mark were neither strongly pronounced nor distinctive.

The applicant raised three substantive arguments on appeal - namely, it argued that the board:

- had been too subjective in its appreciation of the characteristics of the trademark;
- had interpreted the signification of the verbal elements too broadly; and
- had not taken into account the figurative elements of the mark.

The General Court rejected all of these arguments. Firstly, it held that the analysis conducted by the board was objective, rather than subjective. Secondly, it confirmed the board's analysis of the word elements 'melt water original'. Thirdly, it agreed with the board that the figurative elements were not sufficiently distinctive, as all of the different elements making up the mark were commonly used on beverage labels and packaging.

Finally, the court also rejected the applicant's argument pursuant to which the contested OHIM decision was inconsistent with prior OHIM decisions regarding similar matters. The General Court stated that the applicant cannot rely on unlawful acts committed in favour of another in order to obtain an identical decision in its favour.

This decision demonstrates the difficulty of registering signs that could be interpreted as being descriptive of the goods/services that they cover, even if they contain figurative elements.

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