



General Court confirms likelihood of confusion due to high similarity between earlier mark and co-dominant element in contested mark

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CASALONGA

18 February 2022



EUROPEAN UNION

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- The intervener opposed the registration of VITABLOCS TRILUXE FORTE in Classes 5 and 10 based on the earlier mark TRILUX in the same classes
- The court confirmed the board's conclusion that the elements 'vitablocs' and 'triluxe' both constituted distinctive elements of the contested application
- The signs were visually and phonetically similar as one of the co-dominant elements of the contested sign was almost identical to the earlier mark

On 2 February 2022 the General Court (Sixth Chamber) issued its decision in [Vita Zahnfabrik H Rauter GmbH & Co KG v European Union Intellectual Property Office](#) (EUIPO) (Case T-202/21).

Background

On 9 December 2015 the applicant, Vita Zahnfabrik H Rauter GmbH & Co KG, obtained an international registration for VITABLOCS TRILUXE FORTE (No 1346271) designating, among others, the European Union, for products in Classes 5 and 10 in connection with dental materials, apparatus and instruments.

On 26 September 2017 the intervener, VIPI Indústria, Comércio, Exportação E Importação De Produtos Odontológicos LTDA, filed a notice of opposition on the basis of its earlier EU trademark TRILUX (Registration No 3794443), protected for goods in Classes 5 and 10.

The Opposition Division of the EUIPO rejected the opposition in its entirety as it concluded that, due to the differences between the signs, there was no likelihood of confusion, even for the goods considered identical.

The intervener appealed. The Fourth Board of Appeal of the EUIPO, in its decision of 9 February 2021, annulled the Opposition Division's decision on the ground that there was a likelihood of confusion on the part of the relevant public for all of the goods for which protection was sought.

The applicant filed an appeal before the General Court, relying on a single plea alleging misapplication of Article 47(5) and Article 8(1)(b) of Regulation 2017/1001. In particular, it argued that the board had erred in assessing the visual and phonetic similarities between the signs, as well as the overall likelihood of confusion.

Decision

The General Court proceeded to analyse the different factors to take into consideration in determining whether there is a likelihood of confusion:

- the distinctive character of the earlier mark;
- the relevant territory;
- the relevant public/level of attention;
- the comparison of the goods; and
- the comparison of the signs.

It confirmed the Board of Appeal's conclusions with respect to all of these factors, although concentrating its arguments on the issues raised by the applicant in its appeal, the visual and phonetic similarity, as well as the overall likelihood of confusion.

With respect to the comparison between the signs, the court affirmed the board's holding that the elements 'vitablocs' and 'triluxe' both constituted distinctive elements of the contested application, while 'forte' was considered more descriptive, in particular for the relevant Italian consumer. Although it considered that 'blocs' would be considered descriptive by the relevant public (composed of specialists in the field of dentistry, who would perceive this term as referring to dental blocks used to make dental prostheses), the term 'vita' was seen as distinctive since it had no immediate descriptive or laudatory meaning in relation to the goods.

With respect to the visual comparison, the court rejected the applicant's arguments that the element 'vitablocs' had a greater impact on the overall visual impression as it was at the beginning of the sign, was longer and written in upper-case letters.

With respect to the phonetic similarity, it also rejected the applicant's arguments that the signs were not similar because the elements 'triluxe' and 'trilux' were pronounced differently, and 'vitablocs' was longer, consisting of three syllables.

It therefore confirmed the Board of Appeal's conclusion that the signs were visually and phonetically similar to an average degree due to the fact that one of the co-dominant elements of the contested sign, 'triluxe', was almost identical to the prior mark TRILUX.

Finally, with respect to the overall assessment of the likelihood of confusion, the court once again affirmed the board's analysis. The court differentiated this case - in which the element 'triluxe' was considered to be co-dominant by the board - from the prior case law cited by the applicant, in which the likelihood of confusion was based on the common element between the signs having an independent distinctive role in the contested sign.

Consequently, the court affirmed the Board of Appeal's decision that there was a likelihood of confusion in the minds of the relevant public, in particular the Italian-speaking public, such a conclusion being further reinforced by the fact that the relevant public might perceive the contested sign as an 'umbrella' mark.

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