



Track on Case Law: GC/CJ judgments and EUIPO BoA decisions 2024 Q1

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Programme

60'
Presentation

- 1) Procedural issues
- 2) Absolute grounds
- 3) Relative grounds
- 4) Proof of use

30'
Questions and answers

1 Procedural issues

Art. 95(2) EUTMR – Art. 19(1) and 10(7) EUTMDR

[24/01/2024, T-562/22, NOAH](#)

EUTM



BoA confirmed by
the Court

Cl. 25: polo shirts and sweaters

EUTM stays on the Register, revocation partially rejected

Art. 95(2) EUTMR – Art. 19 and 10(7) EUTMDR

T-562/22 NOAH (fig.)

- The fact that the evidence of use, filed within the prescribed time limit, was **disputed** may justify the submission of **further evidence**, together with the observations in reply
- Its **late submission** during the CD proceedings did not prevent it from being taken into consideration pursuant to Article 10(7) EUTMDR (§ 30)
- Applicant could comment on evidence filed **after closure of the adversarial part** in the obs. on the appeal - no infringement of the right to be heard (§ 43)

Substantiation of earlier rights – No renewal – Art. 7(2), 8(1) EUTMDR

[19/02/2024, R 1693/2023-4, Thins Multigrain Pops / THINS](#)

EUTM application

Thins Multigrain Pops

Goods in
Class 30



Application allowed

Earlier mark

THINS

Goods in
Class 30



Opposition rejected

Substantiation of earlier rights – No renewal – Art. 7(2), 8(1) EUTMDR

19/02/2024, R 1693/2023-4, Thins Multigrain Pops / THINS

- ❑ Relevant is **the date on which the trade mark registration will expire** and not the possibility of renewing the earlier mark within the six-month grace period under the Paris Convention
 - Safeguarding **legal certainty**
 - Reliance on the grace period is contrary to the letter and *ratio legis* of Article 7(2)(a)(ii) EUTMDR
- ❑ Renewal evidence filed on appeal is **inadmissible**
 - **New evidence**, not supplementing the renewal evidence submitted earlier, therefore there is no room for the Board to exercise its discretion under Article 95(2) EUTMR in conjunction with Article 27(4) EUTMDR

2 Absolute grounds

Art. 7(1)(c) EUTMR – Descriptive character

21/02/2024, T-756/22, AMAZONIAN GIN COMPANY

EUTM

BoA confirmed
by the Court

AMAZONIAN GIN COMPANY

*Cl. 33: Gin, alcoholic beverages based
on gin*

✗ EUTM declared invalid

Art. 7(1)(c) EUTMR – Descriptive character

T-756/22 AMAZONIAN GIN COMPANY

- ❑ In view of the importance of botanicals in the manufacture of gin and their potential origin from the Amazon region (well-defined geographical area, despite its extension), consumers will immediately establish a connection between such region and the goods marketed (§ 39)
- ❑ *Amazonian* may describe not only the geographical origin of the goods but also their quality (§ 40)
- ❑ Description of the goods at issue used for marketing purposes confirms BoA findings (§ 41)

Colour mark – Requirements for the representation – Art. 7(1)(a) EUTMR

07/02/2024, R 2087/2023-2, VIOLETT/BLAU/OCKER/GRÜN/ROT/WEISS

EUTM application



Goods and services
in Classes 6, 8, 9,
16, 17, 20 and 35

Application refused

Colour mark – Requirements for the representation – Art. 7(1)(a) EUTMR

07/02/2024, R 2087/2023-2, VIOLETT/BLAU/OCKER/GRÜN/ROT/WEISS

- The mark must be represented in a manner which enables the competent authorities and the public to determine the **clear and precise subject matter of the protection** afforded to its proprietor
- In the present case, it is not clear how the individual colours are arranged in relation to each other, their proportions and whether they are intended to have the same shape
 - Description of the colour combination** could have ensured satisfaction of the precision requirement under Art. 4 EUTMR
- Application **does not comply** with Art. 7(1)(a) EUTMR in conjunction with Art. 4(b) EUTMR





Relative grounds

Art. 8(1)(b) EUTMR – Likelihood of confusion

29/11/2023, T-12/23, DEVICE OF LIGHTNING (fig.)

**BoA confirmed
by the Court**

EUTM	Earlier mark
 <div data-bbox="631 699 971 801">Cl. 25</div>	 <div data-bbox="1460 696 1802 801">Cl. 25</div>

Application rejected

Opposition allowed

Art. 8(1)(b) EUTMR – Likelihood of confusion

T-12/23 Device of a lightning

- The degree of **visual** similarity is **average** (§ 38)
- The difference in the **graphic stylisation** is a **minor** element which is unlikely to remain in the memory of the public (T-389/03 Pelikan § 80; T-238/10 Horse Couture § 31) (§ 37).
- The signs are **conceptually identical** (§ 45)
- Earlier mark has an **average** inherent **distinctive character** (§ 54)
- LoC** confirmed (§ 55-56)

Likelihood of confusion – Art. 8(1)(b) EUTMR

[15/02/2024, R 2388/2022-5, P \(fig.\) / P \(fig.\) et al.](#)

EUTM application



Goods and
services in
Classes 9
and 36



Application allowed

Earlier mark



Services in
Classes
35, 36, 37,
41 and 42



Opposition rejected

Likelihood of confusion – Art. 8(1)(b) EUTMR

15/02/2024, R 2388/2022-5, P (fig.) / P (fig.) et al.

- Differences are easily grasped in the case of very short elements such as single letters (25/10/2023, T-458/21, Q (fig.) / Q (fig.))
 - **Visually similar to a low degree**
- Aural identity** of signs formed by a **single letter** in the global assessment of likelihood of confusion should **not be overestimated**
- Letter ‘P’ does not convey any specific meaning in relation to the relevant goods and services; therefore, the fact that the signs depict this letter is **not sufficient to establish their conceptual similarity** (26/03/2021, R 551/2018-G, Device (fig.) / Device (fig.); 25/10/2023, T-458/21, Q (fig.) / Q (fig.))
- No likelihood of confusion**



Proof of use

Revocation – Use for the registered goods – Art. 58(1)(a) EUTMR

[20/12/2023, joined cases T-221/22 and T-242/22 Lutamax](#)

EUTM

BoA partially
annulled

LUTAMAX

*Class 5: Dietary supplements adapted for
medical or dietetic use (...)*

EUTM remains registered

Art. 58(1)(a) EUTMR – Use for the registered goods

T-221/22, LUTAMAX

- Dietary supplements adapted for medical or dietetic use* is a **sufficiently clear** category, no division into subcategories required (T-585/22, § 75) (§ 73)
- If the goods have several purposes and intended uses, it is not possible to determine a **subcategory** by considering each of the **purposes** that the goods may have (§ 70)
- Manufacturers of dietary supplements might have a legitimate interest in expanding their range of goods (§ 71)

Use of the earlier mark for part of goods – Art. 47(2) EUTMR

[12/02/2024, R 1015/2023 5, 1870 Sallouraoğlu \(fig.\) / SALLOURA 1870 \(fig.\)](#)

EUTM application



Goods and
services in Cl.
29, 30, 35, 43

Earlier mark



Goods and services
in Cl. 29, 30 (incl.
'pastries'), 34 and 43

Contested decision annulled and remitted for further prosecution

Use of the earlier mark for part of goods – Art. 47(2) EUTMR

12/02/2024, R 1015/2023 5, 1870 Sallouraoglu (fig.) / SALLOURA 1870 (fig.)

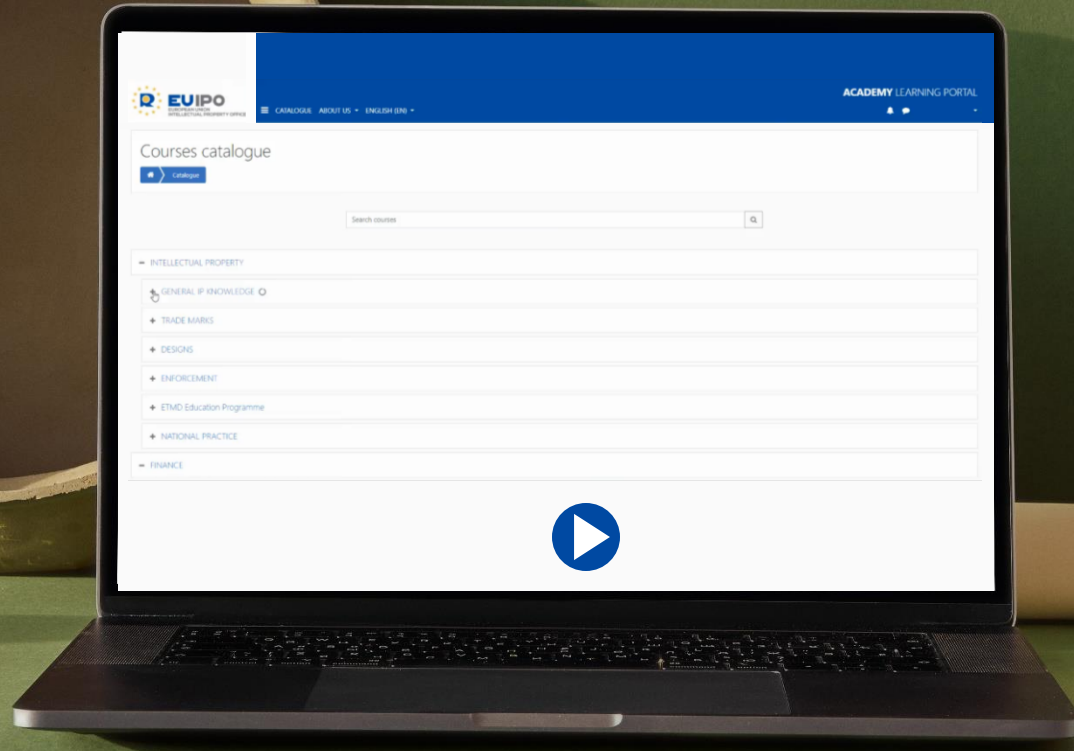
- ❑ Concept of ‘use for part of the goods and services’
 - **Precise and sufficiently narrowly** defined categories of goods and services
 - **Independent and coherent subcategories** of goods and services
- ❑ **Purpose and intended use of the goods at issue** – essential criterion for defining independent subcategories (13/02/2007, T-256/04, RESPICUR)
- ❑ Proof of genuine use of the earlier mark for ‘*baklava*’ (a Turkish dessert based on dough coated with syrup) covers the entire subcategory of ‘*sweet pastries*’, which constitutes a **homogeneous subcategory** of ‘*pastries*’





Questions?

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[Absolute Grounds](#)

[Relative Grounds](#)

[Designs](#)

[Procedure and Registry](#)

Title of procedure ↑	Date	Languages
Acceptability of restrictions of goods and services (substance)	June 2023	EN
Clear and precise definition of goods and services and implications in relative grounds proceedings	October 2022	EN ES DE FR IT
Likelihood of confusion in the case of single-letter signs	November 2023	EN
Similarity between beers and other beverages	July 2022	EN ES DE FR IT
Similarity between foodstuffs/drinks and services for providing food and drink	March 2022	EN ES DE FR IT

Speakers

Speakers from EUIPO



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THANK YOU