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Press and Information

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Judgment of the Court of First Instance in Case T-185/07

Calvin Klein Trademark Trust v OHIM

**THE COURT DISMISSES CALVIN KLEIN'S APPLICATION OPPOSING THE
REGISTRATION OF THE TRADE MARK CK CREACIONES KENNYA**

*The absence of similarity between the conflicting signs precludes a likelihood of confusion on the
part of consumers*

In October 2003, the Spanish company Zafra Marroquinos, SL, filed an application for registration of the mark CK CREACIONES KENNYA at the Office for Harmonisation in the Internal Market (OHIM). Calvin Klein Trademark Trust filed a notice of opposition to registration of the mark in question on the ground that there was a likelihood that consumers would confuse it with its own trade mark.

OHIM dismissed the opposition and found that there were sufficient differences between the conflicting signs to preclude a likelihood of confusion on the part of the relevant public.

First of all, the Court points out that under the Community trade mark Regulation¹, upon opposition by the proprietor of an earlier trade mark, a trade mark must not be registered if because of its identity with or similarity to the earlier trade mark and the identity or similarity of the goods or services covered by the trade marks there exists a likelihood of confusion on the part of the public. The more distinctive the earlier mark, the greater will be the likelihood of confusion. In the present case, it is not disputed that the goods at issue – inter alia clothing, footwear, trunks and travelling bags – are identical.

Secondly, the Court analyses the similarity of the signs in order to assess whether there is a likelihood of confusion. It finds that the figurative signs covered by the earlier registrations consist of the group of letters 'ck', written in upper case printed characters and also contain the words 'calvin klein'. As for the mark applied for, it is a word mark consisting of three elements, namely the group of letters 'ck' followed by the words 'creaciones' and 'kennya'. The Court takes the view that, because of their size, the words 'creaciones kennya' occupy a much more significant position than the group of letters 'ck' and form a syntactical and conceptual unit which dominates the whole of the mark applied for. Furthermore, the element 'ck' corresponds

¹ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

to the initial letters of the words 'creaciones' and 'kennya', thus establishing the origin of that element and explaining its presence. Owing to the way in which it is presented, that element occupies an ancillary position in relation to the element 'creaciones kennya'.

The mark applied is dominated visually by the element 'creaciones kennya'. The mere visual resemblance of the sole or dominant figurative element 'ck' in the earlier marks and the element 'ck' in the mark applied for does not serve to create a visual similarity between the marks at issue.

The marks are not similar phonetically since the earlier mark will be referred to by means of the group of letters 'ck' whereas only the words 'creaciones kennya' alone or the whole of the expression 'ck creaciones kennya' will be used to refer to the mark applied for.

Conceptually, the group of letters 'ck' in the mark applied for derives from the words 'creaciones kennya' but as regards the earlier mark that group of letters constitutes a reference to the manufacturer and designer of fashion items Calvin Klein.

The Court takes the view that the visual, phonetic and conceptual examination of the marks shows that the overall impression created by the earlier marks is dominated by the element 'ck' whereas that created by the trade mark applied for is dominated by the element 'creaciones kennya'.

The Court holds that there is no similarity between the conflicting signs and that there is no likelihood of confusion between the marks at issue. Accordingly, it dismisses the action brought by Calvin Klein.

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: FR EN DE ES

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-185/07>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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