



Press and Information

General Court of the European Union  
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Luxembourg, 29 March 2012

Judgment in Case T-369/10  
You-Q BV v OHIM

## **Apple Corps can prevent the registration of a figurative Community trade mark composed of the word 'BEATLE' in respect of electric mobility aids**

*It is likely that, by using that mark, You-Q would take unfair advantage of the repute and the consistent selling power of the marks BEATLES and THE BEATLES held by Apple Corps*

In January 2004, Handicare Holding BV applied to OHIM, the Community Trade Mark Office, for registration of a figurative sign composed of the word 'BEATLE' as a Community trade mark in respect of electric mobility aids for persons with reduced mobility.

However, Apple Corps Ltd, an undertaking founded by 'The Beatles' group, opposed that application, relying on its various earlier Community and national trade marks, including the word mark 'BEATLES' and several figurative marks composed of the word 'BEATLES' or 'THE BEATLES'.

On 31 May 2010, OHIM rejected Handicare's application, finding that, because of the similarity of the signs, the considerable and long-standing reputation of the earlier marks of Apple Corps and the overlap of the relevant public, it was likely that Handicare would take unfair advantage of the repute and the consistent selling power of the marks of Apple Corps by using the mark applied for. OHIM therefore concluded that there was a serious risk that detriment to the earlier marks, of which Apple Corps is the proprietor, would occur.

Handicare – which became You-Q BV after this case had been brought – asked the Court to annul that decision.

In its judgment today, **the Court has upheld OHIM's analysis and dismissed the action.**

First of all, the Court has held that OHIM was entitled to find, on the basis of the evidence submitted, in particular the sales of the Beatles' records, that the earlier marks THE BEATLES and BEATLES have an enormous reputation for sound records, video records and films and a reputation, albeit lesser, for merchandising products such as toys and games.

Next, in the view of the Court, OHIM was right to find that, visually, phonetically and conceptually, the signs at issue are very similar.

Moreover, those marks have a distinctive character so that, when faced with them, the public at large, in particular in the non-English speaking countries of the EU, will immediately think of the eponymous group and their products.

Similarly, OHIM was right to observe that there is an overlap between the two sections of the public targeted by the signs at issue, since persons with reduced mobility are also part of the wider general public targeted by the earlier marks.

Consequently, OHIM was entitled to infer from those factors that, notwithstanding the difference between the goods in question, there is a link between the signs at issue.

Accordingly, because of the existence of that link, the relevant public, even in the absence of a likelihood of confusion, would be led to transfer the values of the earlier marks to the goods

bearing the mark applied for. The image conveyed by the earlier marks is, even after fifty years of existence, still synonymous with youth and a certain counter-culture of the 1960s, an image which is still positive. That positive image could benefit the goods covered by the mark applied for, since the relevant public, on account specifically of the handicap in question, would be particularly attracted by the very positive image of freedom, youth and mobility associated with the marks BEATLES and THE BEATLES. This is especially so as a part of the public targeted by You-Q's goods belongs to the generation of persons who knew the Beatles' goods in the 1960s and some of whom may now be concerned by the goods covered by the mark applied for. That image transfer would therefore enable You-Q to introduce its own trade mark on the market without incurring any of the great risk or costs, in particular advertising costs, connected with launching a newly created mark.

The Court therefore concludes that OHIM did not err in finding that it is likely that, by using the mark applied for, You-Q would take unfair advantage of the repute and the consistent selling power of Apple Corps' trade marks.

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**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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