



Press and Information

Court of Justice of the European Union  
**PRESS RELEASE No 156/14**  
Luxembourg, 20 November 2014

Judgment in Joined Cases C-581/13 P and C-582/13 P  
Intra-Press SAS v OHIM and Golden Balls Ltd

## **The Court of Justice partially sets aside the judgments of the General Court regarding registration of the sign GOLDEN BALLS as a Community trade mark**

*OHIM must reassess whether that sign may be registered, giving consideration to whether its similarity with the mark BALLON D'OR, albeit low, is sufficient for the public to establish a link between the two marks*

According to the Community Trade Mark Regulation<sup>1</sup> a trade mark cannot be registered if there is a likelihood of confusion on the part of consumer because it is identical or similar to an earlier trade mark and the goods or services covered by the two trade marks are identical or similar.

Furthermore, if the two trade marks are identical or similar, registration of the new mark must, even where the goods and services are different, be refused if the earlier trade mark has a reputation in the EU or in a Member State and if use of the new trade mark would take unfair advantage of, or be detrimental to, that reputation.

In June and October 2007, Golden Balls, a British company, filed applications with OHIM, the Community trade mark office, for registration of the word mark GOLDEN BALLS as a Community trade mark for various goods and services.<sup>2</sup>

Intra-Press, the French company which organises the Ballon d'Or (an award given to the best footballer of the year), filed notices of opposition against those applications. The oppositions were based on the Community word mark BALLON D'OR, which OHIM registered for Intra-Press in 2006.<sup>3</sup>

By two decisions, OHIM upheld the oppositions in part and registered the mark GOLDEN BALLS only for goods that are different from those covered by the trade mark BALLON D'OR. OHIM took the view that, conceptually, the two word marks were at the very least extremely similar, which was likely to cause confusion for the public if they were used for goods or services that are identical or similar.

Golden Balls brought two actions before the General Court for annulment of OHIM's decisions. Intra-Press also applied to the General Court for the annulment of those decisions, on the view that OHIM had been wrong to dismiss its oppositions in part.

In its judgments of 16 September 2013<sup>4</sup>, the General Court held that the trade mark BALLON D'OR did not constitute a barrier to the registration of the mark GOLDEN BALLS as a Community trade mark. According to the General Court, those signs had only a weak degree of conceptual similarity and could therefore be registered even for identical or similar goods and services, because there was no likelihood of confusion.

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

<sup>2</sup>The application concerned goods and services in Classes 9, 16, 21, 24, 28 and 41 of the Nice Agreement. The goods and services covered include slot machines, games and playthings, production of television programmes, paper goods, household or kitchen utensils and containers, and textile goods.

<sup>3</sup>The mark BALLON D'OR had been registered for goods and services in Classes 9, 14, 16, 18, 25, 28, 38 and 41 of the Nice Agreement. Those goods and services include jewellery, paper goods, leather goods, clothes, games and playthings, telecommunications services, production of television programmes, and various apparatus.

<sup>4</sup>Joined Cases [T-427/11](#) and [T-448/11](#) *Goldenballs v OHIM*

Intra-Pressé brought two appeals before the Court of Justice against those judgments.

In today's judgment, the Court **dismisses the appeals to the extent that they concern registration of the mark GOLDEN BALLS for goods identical or similar to those covered by the mark BALLON D'OR, because there is no likelihood of confusion.**

On the other hand, the Court points out that, according to the General Court's own findings, there is a low degree of conceptual similarity between the two marks at issue. Accordingly, as regards goods covered by the mark GOLDEN BALLS but different from those covered by the mark BALLON D'OR, the General Court should have determined whether the low degree of similarity was nevertheless sufficient, on account of the presence of other relevant assessment factors (such as the reputation or recognition enjoyed by the earlier mark), for the public to make a link between those two marks.

The Court holds that, by failing to assess those factors, **the General Court erred in law. It follows that the judgments of the General Court must be set aside** to the extent that they dismissed Intra-Pressé's applications for annulment.

Choosing to rule itself on the substance of the dispute, the Court finds that, since Intra-Pressé's oppositions concern, inter alia, goods different from those for which Golden Balls seeks coverage, OHIM should have assessed whether the mark BALLON D'OR had a reputation in the European Union or in a Member State and whether registration of the new mark was liable to be detrimental to that reputation because the public could assume that the two marks were linked. However, OHIM did not carry out that assessment, which meant that it failed to carry out a full assessment of the oppositions filed by Intra-Pressé.

Consequently, **the Court also annuls the decisions of OHIM** to the extent that they dismissed Intra-Pressé's oppositions against registration of the mark GOLDEN BALLS for goods that are different from those covered by the mark BALLON D'OR.

---

**NOTE:** An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

---

*Unofficial document for media use, not binding on the Court of Justice.*

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

Press contact: Christopher Fretwell ☎ (+352) 4303 3355