



Press and Information

General Court of the European Union
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Judgment in Case T-201/14
The Body Shop International plc v OHIM

The Body Shop cannot register 'SPA WISDOM' as a Community trade mark

The term 'spa' is not a generic term for cosmetic products

In 2010, The Body Shop International, established in Littlehampton (UK), filed an application for registration of a Community trade mark with the Office for Harmonisation in the Internal Market (OHIM).¹ Registration as a mark was sought for the word sign SPA WISDOM. The application for registration concerned, inter alia, cosmetic products.

Spa Monopole, compagnie fermière de Spa, established in Spa (Belgium), filed a notice of opposition to that registration. Its opposition was based on a number of earlier marks registered in Benelux which use the term 'spa', including the word mark SPA, which covers, inter alia, mineral water and aerated waters.

In January 2014, OHIM upheld the opposition and rejected the application for registration of the mark SPA WISDOM in its entirety. It found that there was a risk that the use of that mark would take unfair advantage of the distinctive character or the repute of Spa's earlier mark. On 26 March 2014, The Body Shop brought an action before the General Court in order to have OHIM's decision annulled.

In today's judgment, the Court dismisses the action brought by The Body Shop.

It thus confirms its previous case-law,² holding that the term 'spa' may possibly be a generic and descriptive term for places for hydrotherapy, such as hammams or saunas, but not for cosmetic products, on the ground that the links between cosmetic products and hydrotherapy centres are not such that the generic nature or descriptiveness of that word can be extended to them.

The Court states that the goods covered by the word mark SPA, namely mineral water, may be used as ingredients in cosmetic products. There is therefore a certain closeness between those two types of goods, which is reinforced by the fact that mineral water operators sometimes sell cosmetic products which includes mineral water.

Consequently, in the light of the target public with respect to the signs at issue, namely the general public in the Benelux countries; the average degree of similarity between those signs; the closeness between the goods covered by the signs at issue; and the high reputation of the trade mark SPA, OHIM did not err in finding that the relevant public was likely to establish a link between the signs at issue.

Furthermore, the Court points out that the image of the mark SPA and the message it conveys relate to health, beauty, purity and richness in minerals. That also applies to cosmetic products. Those products are intended to protect, take care of and cleanse the skin and their purpose is that of beauty.

¹ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

² Case [T-21/07](#) L'Oréal v OHIM, Case [T-109/07](#) — Spa Monopole (SPALINE), and L'Oréal v OHIM — Spa Monopole (SPA THERAPY).

The Court therefore holds that OHIM was right to find that there was a risk that the use of SPA WISDOM would take unfair advantage of the repute of the trade mark SPA and of the image conveyed by that mark, with the result that the marketing of the goods covered by the mark applied for would be made easier by their association with the earlier mark.

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 EU 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.

NOTE: Community trade marks are valid throughout the European Union and co-exist with national trade marks. Applications for registration of a Community trade mark are sent to OHIM. Actions against its decisions may be brought before the General Court.

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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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