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Press and Information

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Judgment of the Court of First Instance in Case T-435/05

Danjaq LLC v OHIM

THE COURT OF FIRST INSTANCE DISMISSES THE ACTION OF THE OWNER OF THE RIGHTS TO THE ‘JAMES BOND’ FILMS AGAINST REGISTRATION OF THE COMMUNITY TRADE MARK ‘DR. NO’ BY ANOTHER COMPANY

The proprietor, Danjaq, has failed to establish either that the signs ‘Dr. No’ and ‘Dr. NO’ were used as trade marks or that the title of the film Dr. No was used in the course of trade, which might have enabled it to oppose registration of the mark.

On 13 June 2001, Mission Productions, a German media company, applied for registration of the word sign ‘Dr. No’ as a Community trade mark.

Danjaq, the American company which manages the intellectual property rights to the ‘James Bond’ series of films, opposed that registration, claiming that there was a likelihood of confusion with its earlier well-known marks ‘Dr. No’ and ‘Dr. NO’ and relying on its non-registered marks and the earlier signs used in the course of trade ‘Dr. No’ and ‘Dr. NO’.

OHIM rejected the opposition, holding that Danjaq had not proved either that the signs ‘Dr. No’ and ‘Dr. NO’ had been used as trade marks or that they had previously been used in the course of trade as signs other than trade marks.¹

Danjaq brought an action against the OHIM decision before the Court of First Instance.

First of all, the Court of First Instance points out that the essential function of a trade mark is to identify the commercial origin of the goods or services in question. It notes that the signs ‘Dr. No’ and ‘Dr. NO’ used by Danjaq do not indicate the commercial origin of the films, but rather their artistic origin. Those signs, affixed to the covers of the video cassettes or to the DVDs, help to distinguish that film from other films in the ‘James Bond’ series. The commercial origin of the film is indicated by other signs, such as ‘007’ or ‘James Bond’. In those circumstances, the signs

¹ Following that decision, Danjaq applied for registration as a Community trade mark of the other James Bond film titles. 18 of those 21 titles were registered. The registrations of the remaining three, *Casino Royale*, *Octopussy* and *Goldeneye*, were the subject of opposition proceedings brought by other companies, and the applications are still pending.

'Dr. No' and 'Dr. NO' cannot be regarded as well known trade marks or non-registered trade marks that could be relied on in order to oppose the registration of a Community trade mark.

Next the Court of First Instance recalls that the protection provided for by copyright cannot be relied on in opposition proceedings, but only in proceedings for a declaration of invalidity of a Community trade mark after it has been registered.

However, the titles of artistic works are protected by certain national laws against the use of a subsequent mark, as distinctive signs outside the area of copyright. Thus, German and Swedish law afford protection against a subsequent trade mark which gives rise to a likelihood of confusion with the titles in question, provided that such titles have distinctive character and are used in the course of trade. Nevertheless, since the documents submitted by Danjaq were too general, not objective, and irrelevant to the countries concerned, they are not sufficient to establish that the title *Dr. No* was used in the course of trade in the territories in question, even though the extent of use of that title could have been established without too much difficulty, for example by providing programming details of the film, either for cinemas or television.

Consequently, the Court of First Instance dismisses the action, since Danjaq has failed to establish either that the signs 'Dr. No' and 'Dr. NO' were used as trade marks or that the title of the film *Dr. No* was used in the course of trade.

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: EN, FR, DE

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-435/05>

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

For further information, please contact Christopher Fretwell

Tel: (00352) 4303 3355 Fax: (00352) 4303 2731