



Press and Information

General Court of the European Union
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Judgment in Case T-63/09
Volkswagen AG v OHIM

Volkswagen cannot oppose the registration of the Community trade mark SWIFT GTi applied for by Suzuki

The General Court confirms OHIM's decision that there is no likelihood of confusion between that trade mark and the earlier trade marks 'GTI' held by Volkswagen

The Community Trade Mark Regulation¹ allows the proprietor of an earlier mark to oppose the registration of a mark applied for if, because of its identity with, or similarity to, the earlier trade mark and the identity or similarity of the goods covered by the trade marks, there exists a likelihood of confusion on the part of the public in the territory in which the earlier trade mark is protected. According to settled case-law, a likelihood of confusion exists if the public might believe that the goods in question come from the same undertaking or from undertakings which are economically linked.

In October 2003, Japanese car manufacturer Suzuki applied to the Office for Harmonisation in the Internal Market (OHIM) for registration of the word sign SWIFT GTi as a Community trade mark for motor vehicles, their parts and accessories. Volkswagen is the proprietor of the German word mark GTI and the international mark GTI - which has effect in Sweden, the Benelux, France, Italy and Austria, among others – for motor vehicles and their parts. Volkswagen opposed Suzuki's application, claiming that there was a likelihood of confusion.

OHIM dismissed that opposition, holding that there was no likelihood of confusion. Any similarity between those marks in view of the combination of the letters 'gti', intuitively perceived as referring to certain technical characteristics of a car or its engine, would be largely if not entirely countered by the fanciful model name SWIFT appearing in the initial part of the mark applied for.

In its judgment delivered today, the General Court confirms that analysis and dismisses the action brought by Volkswagen against OHIM's decision.

The General Court finds that OHIM did not err in holding that the combination of the letters 'gti' would be perceived by professionals in the motor vehicle industry as a descriptive indication and that it had only an extremely low degree of inherent distinctiveness for the general public. In that regard, OHIM had taken particular account of the widespread use of the initials GTI by numerous car manufacturers throughout Europe (such as Rover, Nissan, Mitsubishi, Peugeot, Suzuki and Toyota) to indicate the technical characteristics of certain models and the existence of other marks containing the initials GTI (for example 'Peugeot GTI' or 'Citroën GTI'). Moreover, OHIM was right to find that the word SWIFT, perceived as fanciful and positioned in the initial part of the mark applied for, was its most distinctive element.

Consequently, the General Court rules that OHIM was right to conclude that any visual, phonetic or conceptual similarity between the marks at issue was largely compensated or even entirely countered by the model name SWIFT. Similarly, OHIM correctly held that the average consumer in Sweden, the Benelux, Germany, France, Italy and Austria would not assume that all vehicles, parts

¹ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1), amended and replaced by Council Regulation No 207/2009 on the Community trade mark (OJ 2009 L 78, p. 1).

and accessories come from the same manufacturer simply on the basis of the combination of the three letters 'gti' and accordingly any likelihood of confusion was excluded.

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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