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Judgments of the General Court in Cases T-1103/23 and T-1104/23 | Ferrari v EUIPO – Hesse (TESTAROSSA)

European Union trade marks: the General Court annuls the decisions revoking Ferrari's rights in the word mark TESTAROSSA for certain goods, including cars, parts and accessories, and scale models of cars

Since 2007, Ferrari SpA has been the proprietor of the word mark TESTAROSSA, in particular for cars, parts and accessories, and scale models of cars (toys).

Hearing two applications for declarations of invalidity of the trade mark TESTAROSSA, the European Union Intellectual Property Office (EUIPO) decided to revoke Ferrari's rights in that mark. It found that, for a continuous period of five years, between 2010 and 2015, that mark had not been put to 'genuine use' in the European Union in connection with the goods for which it was registered.

In its judgments, the **General Court**, hearing actions brought by Ferrari, **annuls EUIPO's decisions**.

As regards the Testarossa cars, the Court states that they were built between 1984 and 1996, following which only second-hand cars were marketed by dealers or distributors authorised by Ferrari. In that regard, it points out that the use of the trade mark by its proprietor in accordance with its essential function – to guarantee the identity of the origin of the goods for which it was registered – when reselling second-hand goods is capable of constituting 'genuine use'. That also applies to its use by third parties with the consent of the proprietor, whether express or implied.

Taking into consideration the uses and characteristics of the particular market for cars, the Court considers that the sale of a second-hand car by a dealer or distributor authorised by the proprietor of that mark may be recognised as having been made with the implied consent of the latter, on account of the existence of an authorisation which establishes a link between those two companies. That link presupposes that the proprietor of the mark has authorised the approved dealer or distributor to use it. Furthermore, the General Court points out that Ferrari was involved in the sale of certain second-hand Testarossa cars by those authorised dealers or distributors by means of a service certifying the authenticity of those vehicles.

Thus, the Court concludes that Ferrari has demonstrated that it had impliedly consented to the use of the contested mark by third parties.

As regards the parts and accessories, the Court observes, also in respect of those goods, that use was made of the mark during the period in question by authorised dealers and distributors. In addition, the certification service offered by Ferrari includes verification of the commercial origin of the main parts of the Testarossa model cars. The Court therefore concludes that the undertaking has demonstrated its implied consent to the use by third parties of the mark concerned.

As regards scale model vehicles (toys) (Case T-1104/23), the Court points out that the affixing by a third party of a sign identical to a trade mark registered for toys to scale model vehicles cannot be prohibited unless it affects or is

liable to affect the functions of that trade mark, which must be assessed according to the characteristics of the market for scale model vehicles.

The Court considers that a third party may use such a mark without the consent of its proprietor, provided that the use made of that mark on the scale model vehicle is limited to indicating to the relevant public that that product is a faithful reproduction of a real car. In contrast, where the use of the mark by a third party goes beyond that mere indication and refers, for example, to a licence agreement entered into with the proprietor of that mark, it will be perceived as an indication that those goods originate from the car manufacturer or from an undertaking economically linked to that manufacturer.

After analysing the evidence of the use of the contested mark, the General Court notes that it was used during the period in question by third parties for scale model vehicles with the words 'Ferrari Official Licensed Product'. Thus, it considers that the mark was used in accordance with its essential function, which is to guarantee the commercial origin of the goods for which it was registered. In addition, it points out that its use by third parties in respect of the scale model vehicles was made with Ferrari's implied consent.

NOTE: EU trade marks and Community designs are valid for the entire territory of the European Union. EU trade marks coexist with national trade marks. Community designs coexist with national designs. Applications for registration of EU trade marks and Community designs are addressed to EUIPO. Actions against its decisions may be brought before the General Court.

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, depending on the case, 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: 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 and ten days of notification of the decision. The appeal will not proceed unless the Court first decides that it should be allowed to do so. Accordingly, it must be accompanied by a request that the appeal be allowed to proceed, setting out the issue(s) raised by the appeal that is/are significant with respect to the unity, consistency or development of EU law.

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The full text and, as the case may be, abstracts of the judgments ([T-1103/23](#) and [T-1104/23](#)) are published on the CURIA website on the day of delivery.

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