



Press and Information

General Court of the European Union  
**PRESS RELEASE No 162/18**  
Luxembourg, 25 October 2018

Judgment in Case T-122/17  
Devin v EUIPO

## **DEVIN, the name of a Bulgarian town, can be registered as an EU trade mark for mineral water**

*The geographical name remains available to third parties not only for descriptive use, such as the promotion of tourism in that town, but also as a distinctive sign in cases of 'due cause' and where there is no likelihood of confusion*

On 21 January 2011, the company Devin AD, obtained from the European Union Intellectual Property Office (EUIPO) registration of the EU word mark DEVIN for non-alcoholic drinks.

In July 2014, Haskovo Chamber of Commerce and Industry (Bulgaria), filed an application with EUIPO for a declaration of invalidity of the contested mark.

By a decision of 29 January 2016, EUIPO, in essence, found that the town of Devin in Bulgaria was known to the general public in Bulgaria and a significant proportion of consumers in neighbouring countries such as Greece and Romania, especially as a renowned spa town, and that the name of that town was linked by the relevant public with the designated goods covered by the contested mark, especially mineral waters. EUIPO therefore declared the mark invalid in its entirety.

Devin AD brought an action before the General Court seeking annulment of the decision of EUIPO.

By today's judgment, **the General Court annuls the decision of EUIPO.**

The General Court notes first that, for the Bulgarian consumer, even if he recognises the word 'devin' as a geographical name, it seems extremely implausible that the trade mark DEVIN has not acquired, at least in Bulgaria, a normal distinctive character, without there being any need to rule on its reputation.

With regard to the average Greek or Romanian consumer, the General Court notes that the existence of a 'tourist profile on the internet', in itself, does not suffice to establish the knowledge of a small town by the relevant public abroad. Furthermore, the fact that the town of Devin has a 'considerable tourism infrastructure' does not warrant the conclusion that such a consumer could have knowledge of the town beyond its borders or establish a direct link with it.

The General Court points out that EUIPO, by wrongly focusing on foreign tourists, in particular Greeks or Romanians, who visit Bulgaria or Devin, did not take into consideration the entire relevant public, consisting of the average consumer of the EU, in particular from those Member States. In that regard, the General Court considers that the average consumer of mineral water and beverages in the EU does not have a high degree of specialisation in geography or tourism and that there is no specific evidence to establish that such a consumer perceives the word 'devin' as a geographical place in Bulgaria.

As regards the availability of the geographical name for other parties, the General Court notes that, under legislation and the case-law, a descriptive use of the name 'Devin' is still permitted in order to promote the town as a tourist destination and that the contested mark cannot therefore

constitute an impediment to the economic efforts to develop, beyond the borders of Bulgaria, the reputation of the town of Devin for its spa waters.

The General Court also points out that EU law provides, in the very definition of the exclusive right conferred by a mark, safeguards to protect the interests of third parties. First, the protection of the function of indicating the origin of the trade mark covers its use for identical or similar goods (or services) only and requires a risk of confusion on the part of the relevant public, which is assumed in the case of double identity of signs and goods. Secondly, the protection of the advertising function of a reputed trademark also covers dissimilar products, but requires a risk of dilution, tarnishing or free-riding and, in addition, does not cover uses with a 'due cause'. In the present case, the name of the town of Devin therefore remains available to third parties not only for descriptive use, such as the promotion of tourism in that town, but also as a distinctive sign in cases of 'due cause' and where there is no likelihood of confusion.

**The general interest in preserving the availability of a geographical name such as that of the spa town of Devin can thus be protected** by allowing descriptive uses of such names and by means of safeguards limiting the exclusive right of the proprietor of the contested mark, **without requiring cancellation of that mark**. According to the General Court, it is this necessary balance between the rights of the proprietors and the interests of third parties which allows the registration of trade marks originating from an eponymous geographical name, such as the EU word marks VITTEL and EVIAN, under certain conditions.

The General Court concludes that **EUIPO has not established the existence of a sufficient degree of recognition of the town of Devin by the average EU consumer, in particular Greek or Romanian consumers**. The proportion of EU consumers who know the town of Devin must be considered to be very small. It follows from this that **EUIPO erred in its assessment by concluding that the contested trade mark was descriptive of a geographical origin as regards the average consumer in the neighbouring countries of Bulgaria, namely Greece and Romania, and in all the other Member States of the EU**.

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

**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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