



Press and Information

Court of Justice of the European Union
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Judgment in Case C-240/18 P
Constantin Film Produktion v EUIPO

EUIPO must give a fresh decision on the application made by Constantin Film for registration of the sign Fack Ju Göhte as an EU trade mark

EUIPO and the General Court, which both found that the sign is contrary to accepted principles of morality, failed to take sufficient account of the fact that the title of a comedic film does not appear to have been perceived as morally unacceptable by the German-speaking public at large

The 2013 German comedic film ‘Fack Ju Göhte’, produced by Constantin Film, has been seen by almost 7.4 million moviegoers in Germany. Along with its sequels ‘Fack Ju Göhte 2’ and ‘Fack Ju Göhte 3’, released in 2015 and 2017 respectively, it is one of German cinema’s biggest successes. The film was also very successful in Austria.

In 2015, Constantin Film applied to the European Union Intellectual Property Office (EUIPO) for registration of the word sign Fack Ju Göhte as an EU trade mark designating various goods and services, in particular cosmetics, jewellery, office items, travel and sporting goods, games, foodstuffs and beverages.

EUIPO refused to grant protection to that sign as a trade mark, on the ground that it infringes accepted principles of morality. According to EUIPO, the German-speaking public recognises, in the words ‘Fack ju’, the vulgar and offensive English phrase ‘Fuck you’ (transcribed phonetically in German). The addition of the element ‘Göhte’ (a phonetic transcription of the name of the German poet Goethe) could not substantially alter the perception of the insult ‘Fack ju’.

Constantin Film unsuccessfully challenged that refusal before the General Court which, by judgment of 24 January 2018, dismissed the action.¹ An appeal was then brought before the Court of Justice against the judgment of the General Court.

By today’s judgment, the Court sets aside the judgment of the General Court and annuls the decision of EUIPO, both of which are broadly vitiated by the same errors. EUIPO must therefore give a fresh decision on the application for registration made by Constantin Film.

According to the Court, the General Court and EUIPO failed to take sufficient account of the fact that **a number of contextual factors consistently indicate that, despite the assimilation of the terms ‘Fack ju’ to the English phrase ‘Fuck you’, the title of the comedies in question was not perceived as morally unacceptable by the German-speaking public at large.**

In fact, despite the high visibility accompanying such a success, the title of those comedies does not appear to have stirred up controversy among that audience. Furthermore, access by young people to those comedies, which take place in schools, had been authorised under that title. Moreover, the films received funds from various organisations and were used by the Goethe Institute² for educational purposes.

The Court also observes that the perception of the English phrase ‘Fuck you’ by the German-speaking public is not necessarily the same as the perception thereof by the English-speaking

¹ Case: [T-69/17](#). Constantin Film Produktion v EUIPO (Fack Ju Göhte),

² The Goethe Institute is the cultural institute of the Federal Republic of Germany, active worldwide and tasked, inter alia, with promoting knowledge of the German language.

public, even if it is well known to the German-speaking public and the latter knows its meaning. Sensitivity in the mother tongue may in fact be greater than in a foreign language. For the same reason, the German-speaking public also does not necessarily perceive the English phrase in the same way as it would perceive the German translation of it. Furthermore, the title of the comedies at issue, and therefore the mark applied for, does not consist of that English phrase as such but of its phonetic transcription in German, accompanied by the element 'Göhte'.

Under these circumstances, and in view of the fact that **no concrete evidence has been put forward plausibly to explain why the German-speaking public at large will perceive the word sign 'Fack Ju Göhte' as going against the fundamental moral values and standards of society when it is used as a trade mark**, even though that same public does not appear to have considered the title of those films to be contrary to accepted principles of morality, the Court holds that **EUIPO has failed to demonstrate to the requisite legal standard that the mark applied for cannot be registered.**

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

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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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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