



Press and Information

Court of Justice of the European Union

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Judgment in Case C-766/18 P

Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi v EUIPO

The Court of Justice sets aside the judgment of the General Court according to which the collective mark HALLOUMI, reserved for Cypriot cheesemakers, does not preclude the sign 'BBQLOUMI' from being registered as a European Union trade mark for cheese of a Bulgarian producer

The case is referred back to the General Court which will have to examine whether there is a likelihood of confusion for consumers as regards the origin of the goods covered by the sign 'BBQLOUMI'.

The Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi is the proprietor of the EU collective mark HALLOUMI, registered for cheese. **An EU collective mark is a specific type of EU trade mark, described as collective when the mark is applied for and capable of distinguishing the goods or services of the members of the association which is the proprietor of the mark from those of other undertakings.**

Relying on that collective mark, its proprietor brought opposition proceedings against the registration as an EU trade mark of the figurative sign comprising the word element 'BBQLOUMI', which a Bulgarian company had applied for in relation to, inter alia, cheese. The European Union Intellectual Property Office (EUIPO), responsible for the examination of applications for registration of EU trade marks, dismissed that opposition on the ground that there was no likelihood of confusion between the mark applied for BBQLOUMI and the earlier collective mark HALLOUMI as regards the origin of the goods. The proprietor of the collective mark at issue then brought proceedings against that EUIPO decision before the General Court, which, after having found that that mark had a weak distinctive character because the term 'halloumi' designates a type of cheese, also held that there was no likelihood of confusion.¹

In its judgment of 5 March 2020, Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi v EUIPO (C-766/18 P), the Court of Justice, hearing an appeal against the judgment of the General Court, first gave a ruling on the applicability, to cases concerning an earlier collective mark, of the case-law establishing for individual EU marks the criteria in the light of which the likelihood of confusion, within the meaning of Article 8(1)(b) of the Regulation on the European Union Trade Mark, must be assessed.²

In that regard, the Court ruled that, **where the earlier mark is a collective mark, the essential function of which is to distinguish the goods or services of the members of the association which is its proprietor from those of other undertakings,**³ the likelihood of confusion must be understood as being the risk that the public might believe that the goods or services covered by the earlier trade mark and those covered by the trade mark applied for all originate from members of the association which is the proprietor of that mark, or, as the

¹ Judgment of the General Court of 25 September 2018, Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi v EUIPO — M. J. Dairies (BBQLOUMI), [T-328/17](#).

² Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (OJ 2009 L 78, p. 1), as amended (replaced by Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1)).

³ In accordance with Article 66(1) of Regulation No 207/2009.

case may be, from undertakings economically linked to those members or to that association. Although, in the event of opposition based on a collective mark, the essential function of collective marks must be taken into account in order to understand what is meant by ‘likelihood of confusion’, the fact remains that the case-law establishing, for EU individual marks, the criteria with regard to which the existence of such a likelihood must be assessed in practice is applicable to cases concerning an earlier collective mark. **None of the characteristics of EU collective marks justifies derogation, in the event of opposition based on such a mark, from the assessment criteria of the likelihood of confusion which emerge from that case-law.**

Next, the proprietor of the collective mark at issue claimed that the distinctiveness of the earlier mark should be assessed differently where that mark is an EU collective mark.

The Court rejected that argument noting that the requirement of distinctiveness⁴ applies to EU collective marks also. Articles 67 to 74 of the Regulation on the European Union Trade Mark, which concern EU collective marks, do not contain any provisions to the contrary. Consequently, those marks must in any event, whether intrinsically or through use, be distinctive.

Furthermore, the Court pointed out that Article 66(2) of that regulation is not an exception to that requirement of distinctiveness. While that provision permits, by way of derogation from Article 7(1)(c) of that regulation,⁵ registration as EU collective marks of signs which may serve to designate the geographical origin of goods or services, it does not, on the other hand, allow the signs thus registered to be devoid of distinctiveness. **Where an association applies for registration, as an EU collective mark, of a sign which may designate a geographical origin, it must ensure that that sign has elements which enable the consumer to distinguish the goods or services of its members from those of other undertakings.**

Finally, as regards the assessment of the likelihood of confusion, the Court noted that the likelihood of confusion must be assessed globally, taking into account all factors relevant to the circumstances of the case.

It is apparent from the judgment under appeal that the General Court had relied on the premiss that, in the case of an earlier mark of weak distinctive character, the existence of a likelihood of confusion must be ruled out as soon as it is established that the similarity of the marks at issue, in itself, does not permit such a likelihood to be established. The Court ruled that such a premiss is incorrect since the fact that the distinctive character of an earlier mark is weak does not preclude the existence of a likelihood of confusion. Accordingly, **it was necessary to examine whether the low degree of similarity of the marks at issue is offset by the higher degree of similarity, or even identity, of the goods covered by those marks. Since the assessment made by the General Court does not satisfy the requirement to carry out a global assessment which takes account of the interdependence of the relevant factors, General Court committed an error of law.**

Consequently, **the Court set aside the judgment of the General Court and referred the case back to it for a further examination of the existence of a likelihood of confusion to be carried out.**

⁴ The requirement of distinctiveness is laid down in Article 7(1)(b) and Article 7(3) of Regulation No 207/2009, pursuant to which marks which are devoid of distinctive character are not to be registered, unless the trade mark has become distinctive in relation to the goods or services for which registration is requested in consequence of the use which has been made of it.

⁵ Article 7(1)(c) of Regulation No 207/2009 provides that trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service are not to be registered.

NOTE: EU trade marks and designs are valid throughout the territory of the European Union. EU trade marks co-exist with national trade marks. Community designs co-exist with national designs. Applications for registration of EU trade marks and designs are sent 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 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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