



PRESS RELEASE No 92/24

Luxembourg, 5 June 2024

Judgment of the General Court in Case T-58/23 | Supermac's v EUIPO – McDonald's International Property (BIG MAC)

McDonald's loses the EU trade mark Big Mac in respect of poultry products

The General Court holds that McDonald's has not proved genuine use within a continuous period of five years in the European Union in connection with certain goods and services

Supermac's and McDonald's, an Irish and American fast-food chain respectively, are involved in a dispute regarding the **EU trade mark Big Mac**. That trade mark had been registered for McDonald's in 1996. In 2017, Supermac's filed an application for revocation of that mark in relation to certain goods and services. It submitted that the mark had not been put to genuine use in the European Union in connection with those goods and services within a continuous period of five years.

The European Union Intellectual Property Office (EUIPO) partially upheld that application. However, it confirmed the protection which the contested mark conferred on McDonald's in respect of, *inter alia*, foods prepared from meat and poultry products and meat and chicken sandwiches as well as in respect of services rendered or associated with operating restaurants and other establishments or facilities engaged in providing food and drink prepared for consumption and for drive-through facilities and also the services of the preparation of carry-out foods.

By its judgment, the General Court partially annuls and alters EUIPO's decision, thus further limiting the protection conferred on McDonald's by the contested mark. The General Court holds that McDonald's has not proved that the contested mark has been put to genuine use **as regards the goods 'chicken sandwiches', the goods 'foods prepared from poultry products' and the 'services rendered or associated with operating restaurants and other establishments or facilities engaged in providing food and drink prepared for consumption and for drive-through facilities; preparation of carry-out foods'**.

The evidence which was submitted by McDonald's does not provide any indication of the extent of use of the mark in connection with those goods, in particular as regards the volume of sales, the length of the period during which the mark was used and the frequency of use. Consequently, the evidence taken into account by EUIPO does not serve to prove that there has been genuine use of the contested mark in connection with those goods. Furthermore, the evidence submitted by McDonald's does not serve to prove that the contested mark has been used in connection with 'services rendered or associated with operating restaurants and other establishments or facilities engaged in providing food and drink prepared for consumption and for drive-through facilities; preparation of carry-out foods'.

NOTE: EU trade marks and Community 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 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, 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 of Justice 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.

Unofficial document for media use, not binding on the General Court.

The [full text and, as the case may be, an abstract](#) of the judgment are published on the CURIA website on the day of delivery.

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Images of the delivery of the judgment are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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