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Judgment of the General Court in Case T-604/22 | Société du Tour de France / EUIPO – FitX (TOUR DE X)

Trade mark law: the action brought by Société du Tour de France against registration of the trade mark Tour de X is dismissed

That mark may be used, inter alia, for sporting articles and sporting activities.

In May 2017, the German gym chain FitX filed an application with the European Union Intellectual Property Office (EUIPO) for registration of the following figurative sign as an EU trade mark:



The application for registration covered a number of goods and services, including clothing, shoes, games, toys and video games apparatus, sporting articles and equipment, sporting education services, training, entertainment and sporting and cultural activities.

The French company Société du Tour de France opposed the registration, relying on word and figurative marks with the expression TOUR DE FRANCE or LE TOUR DE FRANCE which it had registered in respect of a number of goods and services ¹.

EUIPO considered that, although the goods and services covered by the marks were identical or similar, there was no likelihood of confusion. Furthermore, the use of the trade mark Tour de X would not take unfair advantage of, or be detrimental to, the trade marks of Société du Tour de France.

Société du Tour de France challenged EUIPO's decision before the General Court of the European Union.

The General Court dismisses the action brought by Société du Tour de France.

It confirms, in essence, EUIPO's analysis ².

The Court holds that **the public will not confuse the marks** despite the identity or similarity of the goods and services and the enhanced distinctiveness acquired through use of the marks of the Société du Tour de France as regards the services in respect of the organisation of cycling competitions. The only common element between the marks – 'tour de' – has a weak distinctive character and the degree of similarity between the marks is low.

According to the Court, **the use of the mark Tour de X in respect of the goods and services that it covers will not take unfair advantage of, or be detrimental to, the distinctive character or the repute of the Société du Tour de France's trade marks.** The public will not make a connection between the marks because, inter alia, the enhanced distinctiveness acquired through use and the reputation of the marks Tour de France and Le Tour de France do not extend to the element common to the conflicting marks: the element 'tour de'. The Court finds that that element is a descriptive expression which is very commonly used in the context of cycling competitions and

similar events and has very little, if any, distinctive character.

NOTE: EU trade marks and Community designs are valid for the entire territory of the EU. 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 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.

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.

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 is published on the CURIA website on the day of delivery.

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

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¹ Namely, the French word marks TOUR DE FRANCE and LE TOUR DE FRANCE, the two EU word marks LE TOUR DE FRANCE, and the international trade mark designating Germany for the figurative mark TOUR DE FRANCE, as reproduced below:

TOUR DE FRANCE

and the EU figurative mark LE TOUR DE FRANCE, as reproduced below:



² The Court points out that the EUIPO erred in considering that the marks at issue were not conceptually similar. There would be a low degree of conceptual similarity if part of the public were to perceive the mark Tour de X as referring to a cycling competition. However, that error has no bearing on the finding that there is no likelihood of confusion.