



Judgment of the Court of Justice in Case C-298/23 | Inter IKEA Systems

Press release No 119/26

Luxembourg, 8 September 2026

Copyright: a proprietor of a trade mark with a reputation may prevent that mark from being used by a political party where the latter has not demonstrated that its freedom of expression takes precedence over the rights and interests of that proprietor

A political party presented to the public its plan for the reform of asylum and immigration policy in Belgium using IKEA trade marks with a reputation in an effort to reinforce its message. To justify that use, that political party invoked its freedom of expression. In its judgment, the Court of Justice holds that, in order to determine whether that use results from 'due cause', the national court must strike a balance between, on the one hand, the trade mark proprietor's right to property and his or her interests and, on the other hand, the right to freedom of expression relied on by the third party and his or her interests, with neither of those two rights being absolute. The Court finds, however, that, in the present case, the use of those IKEA trade marks may cause significant detriment to the repute of those trade marks and to the interests of their proprietor. In those circumstances, it does not appear that the use of the IKEA trade marks for the sole purpose of taking advantage of their reputation in order to reinforce a political message and increase its dissemination takes precedence over the rights and interests of the proprietor of those trade marks; that is, however, for the referring court to verify.

In 2022, the political party Vlaams Belang presented to the public its political plan titled 'IKEA-PLAN – Immigratie Kan Echt Anders' ('IKEA-Plan – Immigration Really Can Be Different') at a press conference, the purpose of that plan being a reform of Belgian asylum and immigration policy. Those proposals were accompanied by illustrations containing signs corresponding to the IKEA trade marks and characters resembling those appearing in the assembly instructions for IKEA's products. The press conference was posted on social media. Inter IKEA, the proprietor of those trade marks, brought an infringement action before the Belgian courts against the Vrijheidsfonds association, which had run the Vlaams Belang campaign.

Before the national court, Vrijheidsfonds acknowledged having used the IKEA trade marks without the proprietor's consent, but maintained that it had used the reputation of those trade marks to reinforce its message, arguing that that constituted a 'due cause' within the meaning of EU law, which protected freedom of expression, including the freedom to express political opinions and political parody.¹ Taking the view that there was a conflict between fundamental rights of the same rank, namely the right to property and the right to freedom of expression, the national court referred the matter to the Court of Justice.

In its judgment, the Court finds first of all that **EU legislation does not provide clarity regarding the concept of 'due cause'**. However, in the recitals of the legislation referred to above, the legislature emphasised the need to apply it in such a way as to ensure full respect for fundamental rights and freedoms, in particular the freedom of expression.

Nevertheless, **mere reliance on the right to freedom of expression is not sufficient to establish due cause**. A third party using a sign identical with, or similar to, a trade mark with a reputation must set out the specific grounds for that use in connection with the exercise of its freedom of expression and demonstrate that those grounds take precedence over the rights and interests of the proprietor of that trade mark.

The national court, which must determine whether the use by a third party results from due cause, **must strike a balance**

between, on the one hand, the right to property of the proprietor of the trade mark with a reputation and his or her interests, and, on the other hand, the right to freedom of expression relied on by the third party and the latter's interests, with neither of those two rights being absolute.

In that context, the national court must determine whether the third party used the trade mark with a reputation in good faith. That is the case, in particular, where such a sign is used to convey an idea or opinion which relates to the trade mark as such, the proprietor of that trade mark, his or her commercial practices, his or her goods or services. Other relevant factors are whether use of the trade mark **contributes to a public interest debate** and the **consequences** that use of the trade mark by a third party may entail **for the proprietor** of that mark. In particular, the proprietor cannot be required to tolerate use which may cause it disproportionate detriment, or which would even be such as to affect adversely the substance itself of the exclusive rights conferred by the registration of that trade mark.

In that context, account must be taken of the intensity of the third party's use of the trade mark with a reputation, the extent of that use and the methods chosen for that use, as well as the fact that the third party's use may give the impression that the proprietor of that trade mark agrees with the political message conveyed or the political ideas promoted, or even supports them in some way, whereas the values advocated by that proprietor are based on neutrality vis-à-vis any political party or are incompatible with that political message.

The Court finds, however, that, in the present case, the use by Vrijheidsfonds of those IKEA trade marks may cause significant detriment to the repute of those trade marks and to the interests of their proprietor. In those circumstances, it does not appear that the use of the IKEA trade marks for the sole purpose of taking advantage of their reputation to reinforce a political message and increase its dissemination, takes precedence over the rights and interests of the proprietor of those trade marks; that is, however, for the referring court to verify.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act.

The General Court has jurisdiction to deal with requests for a preliminary ruling coming exclusively within the following areas (1) the common system of value added tax (VAT), (2) excise duties, (3) the Customs Code, (4) the tariff classification of goods under the Combined Nomenclature, (5) compensation and assistance to passengers in the event of denied boarding or delay or cancellation of transport services, or (6) the system for greenhouse gas emission allowance trading. The Court of Justice has jurisdiction to deal with all other requests for a preliminary ruling.

Neither the Court of Justice nor the General Court decides the national dispute itself. It is for the national court or tribunal to resolve the case in accordance with the ruling by the Court of Justice or by the General Court, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice. The presentation of the facts and the legal context refers to the relevant period and is based on the case file.

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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¹ Article 9(2)(c) of [Regulation \(EU\) 2017/1001](#) of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark and Article 10(2)(c) and (6) of [Directive \(EU\) 2015/2436](#) of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks.