

General Court: 'I heart' signs not registrable as position marks

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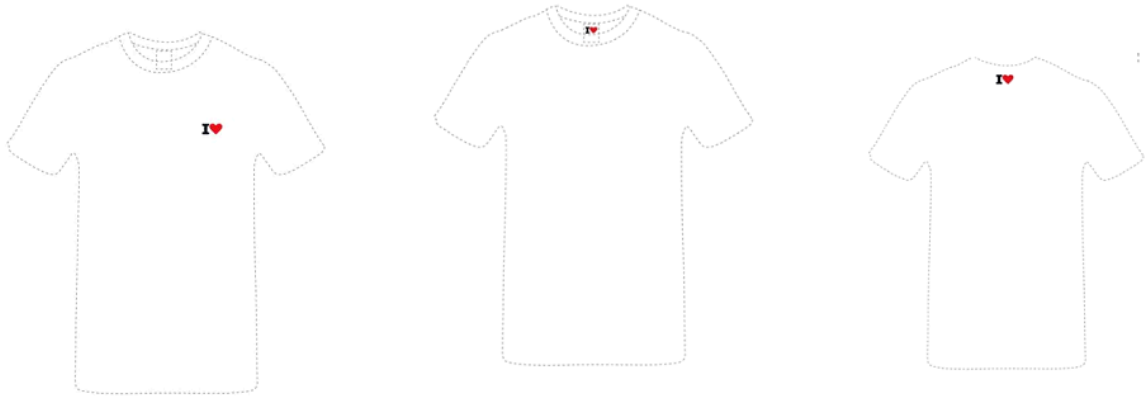
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- The marks will be immediately and exclusively perceived by the relevant public as a laudatory advertising message expressing a preference or affection for the goods at issue
- The court rejected the applicant's argument that the popularity of the 'I heart' sign proved its originality
- The characterisation of a non-distinctive figurative sign as a position mark does not render the sign distinctive

In Cases [T-304/24](#), [T-305/24](#) and [T-306/24](#), the General Court has held that the following signs were not registrable as position marks:



Background

The applicant applied for three EU trademarks consisting of an 'I love' logo as position marks affixed to (i) the left side of the chest, (ii) the label inside the collar and (iii) the back of the collar, for "upper clothing, in particular t-shirts, sweatshirts and pullovers" in Class 25.

The EUIPO rejected all three applications as being non-distinctive pursuant to Article 7(1) (b) of Regulation 2017/1001. The Board of Appeal [confirmed](#) these rejections due to the lack of distinctiveness of the signs. The characterisation as position marks did not render the signs distinctive. Even if the marks were attached to the left side of the chest, the inner collar or the back of the collar, where manufacturers usually brand their upper clothing, they would not be perceived as an indication of origin, but rather as a banal and obvious synonym for the simple advertising slogan 'I love'.

The General court had previously rejected the figurative EUTM No 10023067 for lack of distinctiveness ([Case T-19/20](#)):



In these new cases, the applicant had re-applied for the same sign, this time in the context of position marks in three variations.

The applicant now argued that the Board of Appeal had wrongly held that this logo was non-distinctive. According to the applicant, this contradicted the practice of the EUIPO cited in its reasons and in the General Court decision on the mark WE and heart device in [Case T-568/18](#), where the court acknowledged that 'we' was the dominant element of the figurative sign and had distinctive character. Here, the signs applied for were not limited to a simple geometric shape, but were the result of a deliberately imaginative design. In addition, the characterisation as position marks limited the scope of distinctiveness to particular locations on the products, which consumers typically perceive as indication of origin.

General Court decision

The General Court upheld the Board of Appeal decisions, thereby confirming the rejections of the applications as position marks.

Referring to its previous decision in Case T-19/20, the court first confirmed that the 'I' and 'heart' logo together formed a simple, clear and unambiguous idiomatic phrase with the meaning 'I love'. Consequently, they would be immediately and exclusively perceived by the relevant public as a laudatory advertising message expressing a preference or affection for these goods. Therefore, the Board of Appeal had correctly found that the marks did not contain, beyond their obvious promotional meaning, any distinctive element that could enable the relevant public to easily and immediately memorise them as signs intended to distinguish the commercial origin of the goods at issue.

The court also rejected the applicant's argument that the overall design was not a simple graphic illustration, but rather a consciously imaginative design, and that its popularity proved its originality. According to the court, this demonstrated the opposite, as a sign already in common use on the market is not suitable for identifying products as originating from a particular company and thus distinguishing them from the goods of others.

The classification as position marks did not change this conclusion, as a tag inside a t-shirt or affixed to the front of a t-shirt may typically contain not only trademarks, but also descriptive references or decorative slogans without an indication of origin. A non-distinctive figurative sign does not automatically become distinctive simply because it has been applied for as a position mark; rather, position marks must also be distinctive, just like other types of mark. Signs which are indistinguishable from the appearance of the goods themselves are distinctive, within the meaning of Article 7(1)(b), only if they deviate significantly from the norm or from what is customary in the trade. This was not the case here.

Further, the applicant could not rely on prior EUIPO case law or the EUIPO Guidelines. The General Court is not bound by the EUIPO's decision-making practice or internal guidelines in the context of its examination of legality; rather, the legality of Boards of Appeal decisions is to be assessed exclusively on the basis of Regulation 207/2009 or Regulation 2017/1001, as interpreted by the European courts. Consequently, anyone applying for a sign as an EU trademark cannot invoke a possible misapplication of the law in favour of another party in order to obtain an identical decision.

Comment

The decision confirms that simple advertising messages or promotional references on the front or the collar of t-shirts lack distinctiveness and are typically not registrable, in particular if they are widely known and used – such as 'I love' in this case. The classification as position marks did not change this evaluation in this case. The same threshold of distinctiveness applies to slogans (see the decision in [Case C-311/11](#) concerning the slogan '*Wir machen das Besondere einfach*'), so that stricter or other criteria do not apply (eg, the term need not be fanciful or have a surprising or memorable effect). However, they still need to distinguish the commercial origin of the goods or services at issue.

Nevertheless, even without trademark protection, slogans – and in particular slogans combined with logos or stylised prints on t-shirts and other items of clothing – can be subject to copyright protection. For example, the High Court of Hamburg granted copyright

protection to the slogan '*Wir sind Papst*' ('We are Pope') after German cardinal Joseph Ratzinger was elected Pope (OLG Hamburg GRUR-RR 2025, 61).

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