

General Court rebukes Board of Appeal in LABKABLE opposition

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- The EUIPO Board of Appeal found that there was no likelihood of confusion between LABKABLE and earlier LAPP KABEL marks in Class 9
- The court disagreed, finding, among other things, that the phonetic similarities were sufficient to entail a likelihood of confusion among the relevant public
- The court rejected the board's core argument that the conceptual differences between the signs were sufficient to offset their aural and visual similarities

In [Case T-636/22](#), the General Court has annulled the decision of the Second Board of Appeal of the EUIPO, finding that there was a likelihood of confusion between the conflicting marks and upholding the opposition filed by UI Lapp GmbH.

Background

Labkable Asia Ltd sought the registration of the following figurative EU trademark in Class 9 for “cables, electric; connectors [electricity]; copper wire, insulated; electric sockets”:

Labkable
Solutions for cables

The opponent opposed this application based on the company name UI Lapp GmbH and the German trade names Lapp and Lapp Kabel, as well as on several earlier marks, in particular the figurative marks depicted below, covering goods and services in, among others, Class 9:



The opposition was based on Articles 8(1)(a) and (8)(4) of [Regulation 2017/1001](#).

The Opposition Division of the EUIPO upheld the opposition in its entirety. Considering that genuine use of the earlier marks had been proven for cables, that the signs were aurally highly similar when considering their respective dominant elements, and in view of the identity or high similarity of the goods in Class 9, a likelihood of confusion could not be ruled out for the relevant public, consisting both of the general public and professionals.

On appeal, the Board of Appeal annulled the lower-instance decision and found that there was no likelihood of confusion. Following a global assessment, the board confirmed that there was a low degree of visual similarity between the signs, and a high degree of phonetic similarity for the part of the relevant public that would understand the descriptive meaning of 'kabel' and 'kable'. However, despite the goods being identical or highly similar, even in the context of imperfect recollection, the board believed that a likelihood of confusion was not likely to occur. Considering the marks' differing visual structures and lengths, and the non-negligible figurative elements of the earlier marks, the conceptual difference between the conflicting signs was significant and able to offset their visual and aural similarities.

General Court decision

The General Court, in turn, annulled the Board of Appeal's decision, finding, like the Opposition Division, that there was a likelihood of confusion.

Contrary to the board's assessment, the court found that the level of attention of the relevant public was only average and, since the average consumer only rarely has the chance to make a direct comparison between the different marks, they must place their trust in the imperfect image of them that they have retained in their mind. Accordingly, and further applying the accepted principles to the overall assessment, the court concluded that, given the identity or the high degree of similarity of the goods in question and notwithstanding the low degree of both visual and conceptual similarity of the signs at issue, their phonetic similarities were sufficient to entail a likelihood of confusion on the part of the relevant public. The court, in particular, rejected the board's core argument that the aural and visual similarities could be offset by the conceptual differences, because the board did not apply the corresponding case law, but merely presented the result of its assessment.

Comment

The decision shows that, even in presumably clear-cut cases involving complex signs consisting of distinctive elements and descriptive elements for parts of the EU public, the case law for such signs provides the Opposition Division, the Board of Appeal and the court with a broad scope of interpretation for the overall assessment. The Board of Appeal's core argument in this case (ie, the alleged conceptual differences outweighed any visual or aural similarity between the signs) was stretched beyond its limits and was, in the end, rightfully rejected by the court. To reach such an exceptional finding, a well-founded reasoning is necessary and at least one of the signs must have a clear and specific meaning, so that the relevant public is capable of grasping it immediately (see [Case C-328/18](#), Paragraph 74 and following; [Case T-328/12](#), Paragraph 65; [Case T-277/08](#), Paragraph 53). Here, the core elements of the signs even had the same meaning and any deviating elements were plainly descriptive, so there was no justification for applying this exception.

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