

D YOUNG & CO TRADE MARK NEWSLETTER *no.144*

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In this issue:

Lessons in clarity and precision from Babek and Thom Browne	04
What qualifies as a registrable trade mark?	
The future of AI and copyright law	05
GEMA v OpenAI and Getty Images v Stability AI	
Political parody of a famous brand	06
IKEA v Algemeen Vlaams Belang	
Nine lives and counting	07
Puma successful at the General Court	
UKIPO fee increases	08
Effective April 2026	

From supplements to SANDOKAN A snapshot of bad faith across the UK and EU



Full Story Page 02



Happy New Year and welcome to our first newsletter of 2026.

This year brings with it a number of changes, with the 13th edition of the Nice Classification moving eyewear and sunglasses from class 9 to 10 and essential oils now being classified according to their intended use being two of the notable amendments. In April the UKIPO will bring in the first fee rises for trade marks since 1998 as discussed in this newsletter. Whilst any change requires adaptation, it is an opportunity to review and reflect, an opportune moment to consider whether portfolios need updating to reflect current and anticipated business needs.

Charlotte Duly,
Partner, Trade Mark Attorney

Events



Domain name disputes - practical considerations & recent case law

28 January 2026, Webinar

Charlotte Duly examines the UDRP that applies to domain names such as .com and the Nominet DRS procedure, which is relevant in the UK, and will look at the key points to consider when contemplating filing a domain name dispute, as well as recent case law.

MARQUES Spring Team Meeting

12-13 March 2026, Frankfurt Germany

Jana Bogatz, Charlotte Duly and Gabriele Engels will be attending the Spring 2026 meeting. Gabriele will be presenting the Kay Jonas Memorial Lecture "An Inspiring Journey" and, with Charlotte, organising the "Investigating With AI" workshop.

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Bad faith

From supplements to SANDOKAN

A snapshot of bad faith across the UK and EU

Bad faith continues to evolve and influence trade mark prosecution strategy across the UK and EU. Two recent decisions, one from the UKIPO and one from the EU General Court, shed light on how tribunals are assessing improper filing motives.

CHIDLIFE

CHIDLIFE (Murray Colin Clarke v TNSG Health Co Ltd) offers an illustration of how the UKIPO approaches bad faith where a trade mark filing arises from a long-standing commercial relationship that has broken down.

The applicant is the creator of the CHIDLIFE range of nutritional supplements, sold worldwide since the 1990s. In 2010, to support expansion in Asia, it appointed TNSG as its exclusive distributor in China, Hong Kong and Macau under a series of agreements. These agreements governed TNSG's use of CHIDLIFE IP and expressly prohibited TNSG from registering CHIDLIFE marks in any way (including any translations or transliterations).

In 2021, the applicant discovered that TNSG had, without consent, applied for and secured a UK registration in 2019 for the Chinese transliteration of CHIDLIFE (童年时光), which the applicant had been using in Asia since 2012. It sought invalidation on bad faith after learning of the filing when TNSG launched an invalidation action against its own UK registration for the same Chinese characters.

The UKIPO assessed whether the filing had been in bad faith by asking three questions:

1. what motive was alleged
2. whether that motive, if established, would amount to bad faith; and
3. whether the evidence proved it.

The applicant argued that TNSG was fully aware of its ownership of the Chinese transliteration after many years acting as their exclusive distributor, and could not reasonably have believed it was entitled

to register the mark for itself. It pleaded that TNSG had applied to misappropriate goodwill, obstruct its UK entry, extract payment and position itself as the applicant's UK distributor. The hearing officer held that such a motive, if proven, would amount to bad faith for all goods.

The applicant filed extensive evidence charting the development of the CHIDLIFE brand from 1996, its global distribution since 1997, and its adoption and consistent use of the Chinese characters as the transliteration of CHIDLIFE from 2012 across all goods sold in China, Hong Kong and Macau.

It also demonstrated the depth of TNSG's knowledge: TNSG first approached the applicant in 2009, had seen the transliteration used in the marketplace, and had managed CHIDLIFE products bearing the Chinese transliteration throughout its role as exclusive distributor.

The evidence further showed that TNSG had repeatedly acknowledged that the applicant created the Chinese transliteration and owned the associated IP. It also revealed that, less than three weeks after the first distribution agreement was signed, TNSG applied to register the Chinese characters in China without the applicant's knowledge or consent, followed by another unauthorised filing in Hong Kong. These acts later came to light and contributed to the breakdown of the commercial relationship in 2018.

The applicant's evidence was found to be persuasive. TNSG, by contrast, filed no evidence in chief, relied on bare denials and offered no credible commercial rationale for filing the application.

The hearing officer concluded that the filing was inconsistent with honest commercial practices. By securing a UK registration for a mark identical to one created and used by the applicant, TNSG would have placed itself in a position to control or restrict use of the mark in the UK, despite having no legitimate basis for doing so.

The filing was viewed as an attempt to gain

Related cases

MONOPOLY, T-663/19: dycip.com/T-663-19

Pelikan, T-136/11: dycip.com/T-136-11

Case details at a glance

Jurisdiction: United Kingdom

Decision level: UKIPO

Parties: Murray Colin Clarke v TNSG Health Co Ltd

Date: 20 October 2025

Citation: O/0977/25

Decision (PDF): dycip.com/UKIPO-O-0977-25

Jurisdiction: European Union

Decision level: General Court

Parties: Katri LLC v EUIPO

Date: 03 September 2025

Citation: T-47/24

Decision: dycip.com/GC-T-1-24

a strategic advantage rather than to protect a genuine trade mark right. TNSG's inability to explain why it sought protection for a Chinese-language version of a brand it had not created, did not own and had only ever used as a distributor, reinforced that finding.

TNSG's registration was therefore invalidated in full on grounds of bad faith.

SANDOKAN

Much like its fictional namesake, SANDOKAN (Katri LLC v EUIPO) involves a calculated manoeuvre: the contested trade mark was used strategically to block third parties and to out-sail the non-use regime.

Background

The registered proprietor owned an earlier international registration designating the EU for the word mark SANDOKAN covering goods in classes 9, 16, 25 and 28. The invalidity applicant a TV production company, publicly announced plans to produce a new television series entitled Sandokan, inspired by Emilio Salgari's novels about the pirate hero of the same name.

Following this announcement, the proprietor sent a warning letter to the applicant alleging trade mark infringement. Importantly, the letter did not explicitly request cessation of the alleged infringement, but instead proposed settlement discussions. In its response, the applicant rejected the infringement claim, pointing out that the international registration did not cover services for TV/film production in class 41 and was vulnerable to non-use revocation.

Only five days after receiving this response, the proprietor filed a new European Union trade mark (EUTM) application for SANDOKAN. The EUTM covered the same or similar goods as the international registration and, in addition, services in class 41 relating to audiovisual and television production. The applicant attacked this new filing on the grounds of bad faith.

The international registration was subsequently revoked for non-use by the EUIPO. The decision is currently

under appeal before the General Court in separate proceedings.

Ground 1: filing to obstruct a third party

The first ground of bad faith, upheld by the General Court, related exclusively to services in class 41, that is, those not covered by the revoked international registration.

The General Court emphasised several objective factors:

1. The proprietor was aware of the applicant's concrete plans to produce a new SANDOKAN television series.
2. The warning letter did not seek immediate cessation but attempted to initiate negotiations. The General Court considered this indicative of an intention to obtain some form of advantage, rather than to enforce trade mark rights.
3. The timing was decisive: The EUTM was filed only five days after the applicant had rejected the infringement claim and expressly raised the issue of non-use.
4. Finally, the proprietor failed to demonstrate any honest commercial intention to use the mark for class 41 services. Its claim that it had been working on a SANDOKAN television project in the USA since 2016 was unsupported by evidence.

As a result, the General Court concluded that the EUTM filing for class 41 lacked honest commercial logic and was intended to create an obstacle to the applicant's activities.

Ground 2: abusive re-filing to avoid non-use revocation

The second ground concerned the goods already covered by the international registration (classes 9, 16, 25 and 28). The General Court confirmed that the EUTM constituted an abusive repeat filing:

- The EUTM was identical to the earlier mark and covered identical or, at least, similar goods.
- The EUTM was filed immediately after the applicant had pointed out the vulnerability to a non-use attack.

- Relying on established case law, including MONOPOLY (T-663/19) and Pelikan (T-136/11), the General Court reaffirmed that re-filing a mark in order to artificially reset the five-year grace period for use may constitute bad faith.

Notably, the General Court confirmed that bad faith may also be established for similar goods. Limiting the assessment to identical goods would undermine the system and allow easy circumvention of the use requirement.

The General Court found that the re-filing strategy was designed solely to circumvent the consequences of non-use and, therefore, the objectives of the EU trade mark system.

Cross-case takeaways and reminders for trade mark prosecution strategy

Narrative is decisive: The UKIPO placed significant weight on the provision of a clear and consistent commercial narrative, and on the lack of one. For the General Court, the fact that the proprietor was unable to present a convincing commercial narrative backed up by evidence was an important factor.

Intention can be proven indirectly:

Both the UKIPO and the General Court inferred intention from conduct, timing, knowledge held and the absence of any credible commercial rationale for the filings. In CHILDLIFE, the evidence established that TNSG had long-standing, detailed knowledge of the applicant's brand and its Chinese transliteration, and demonstrated that TNSG could not reasonably have believed it was entitled to apply for the UK mark. In SANDOKAN, the timing and the chronology of events was crucial.

A single motive can taint the entire specification: The UKIPO confirmed that bad faith may apply across all goods where the motive is uniform. The General Court confirmed that re-filing a trade mark in bad faith can also affect similar goods and services.

Authors:

Bonnie Brooks & Julian Graf Wrangel

Lessons in clarity and precision from Babek and Thom Browne

What qualifies as a registrable trade mark?

Case details & related articles

Jurisdiction: United Kingdom

Decision level: Court of Appeal

Parties: *Thom Browne Inc & ann v Adidas AG and Babek International Limited v Iceland Foods Limited*

Date: 23 October 2025

Citations: [2025] EWHC 2990 (Ch)

and [2025] EWCA Civ 1341

Decisions (PDF): dycip.com/2025ewhcciv1341

and dycip.com/2025-ewhc-civ-1341

Thom Browne Inc v Adidas AG:

dycip.com/stripe-high-court-position

Babek v Iceland:

dycip.com/babek-high-court-description

In two judgments, issued on the same day, the UK Court of Appeal set out the law of the land for the registrability of trade marks and the requirements for clarity and precision when drafting trade mark descriptions.

Both cases concern the same legal framework, namely what constitutes a valid trade mark. For a sign to be considered registrable under Section 1(1) of the Trade Marks Act 1994, it must satisfy the following conditions:

1. it must be a sign;
2. that sign must be capable of being represented graphically; and
3. the sign must be capable of distinguishing the goods or services of one entity from those of another.

These appeals focus on the first two conditions. Under the first, the mark must be a single, identifiable sign. EU case law makes clear that a description which embraces a multiplicity of possible forms does not meet this requirement (Dyson). The second condition requires the trade mark to be clear, precise, self-contained, easily accessible, intelligible, durable and objective (Sieckmann).

Thom Browne v adidas

Thom Browne sought to invalidate 16 of adidas's registered position marks, each depicting variations of a three-stripe design applied to either clothing, footwear, or accessories. The marks were described as "three parallel, equally spaced stripes" extending over one-third or more of a sleeve, leg, or side. At first instance, the High Court found eight of the marks invalid for failing to satisfy Section 1(1) of the Trade Marks Act 1994.

adidas appealed the decision in respect of six of the invalidated marks, arguing that:

1. the judge had misinterpreted the EU Court of Justice's decision Dyson regarding "unrepresented signs";
2. the judge overstated the variability encompassed by each mark;

3. the phrase "one third or more" had been wrongly treated as lacking clarity and precision; and
4. the judge placed undue emphasis on visual variation rather than the perception of origin.

The Court of Appeal dismissed all grounds and upheld the High Court's findings on invalidity findings.

Lord Justice Arnold agreed with the first instance judge that the written descriptions allowed for excessive variations, noting that they encompassed differences not only in stripe length and positioning but also orientation. While a full pictorial depiction of every variation is not required, the image and description together must define a single, identifiable sign with sufficient clarity and precision.

On the wording "one third or more," Lord Justice Arnold held that even apparently clear language may still cause ambiguity if the written description extends beyond what is visually depicted. Such ambiguity grants the proprietor an unfair competitive advantage.

The court also concluded that evidence of use does not assist in interpreting the representation or written description of a registered mark. Such evidence did not demonstrate that a large number of variations had been used by adidas, let alone that these variations would all be understood as conveying a single origin.

Babek International v Iceland Foods

Iceland Foods counterclaimed for invalidity of Babek's registered trade mark (depicted below), described as "Gold oval with embossed BABEK writing. Colour claimed: Gold, Black." Iceland argued that the mark failed to comply with Section 1(1) of the Trade Marks Act 1994.

The High Court found that the mark was sufficiently clear and precise, notwithstanding its minor ambiguities. Iceland appealed, contending that:

1. the judge applied the wrong test for determining when colour hues must be specified;

2. alternatively, the "capacity to distinguish" test was misapplied;
3. the effect of the mark's categorisation was misunderstood;
4. the judge failed to recognise that the pictorial representation and written description have equal weight;
5. irrelevant matters were considered; and
6. findings were inconsistent or unsupported.

The Court of Appeal agreed that the wrong test had been applied regarding colour hues but held that this did not affect the outcome. It confirmed that when interpreting a trade mark, the court must consider (a) its categorisation, (b) the pictorial representation, and (c) the written description. No factor takes precedence over others. Lord Justice Arnold concluded that the mark was sufficiently clear and precise. The image aligned with its categorisation as a coloured logo, the written description was consistent, and "embossed" merely described texture or visual effect, not a 3D form. The only difference from the first instance judgment concerned the finding that minor variations in hue were permissible. Lord Justice Arnold held that nothing in the description suggested the depiction was merely illustrative or encompassed hue variation.

In short

These decisions provide valuable guidance on what constitutes a registrable trade mark and underline the importance of precision and consistency in trade mark applications. These points are even more important in relation to figurative and position marks. The way such a mark is represented and described at the point of filing is just as important as the mark itself. The boundaries of protection are set at the time of registration, and a lack of clarity can leave even well-known brands exposed to challenges. Brand owners should seek legal advice during the filing process to ensure that representations and descriptions are drafted with the necessary clarity and precision to avoid future pitfalls when it comes to enforcement.

Author:
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The future of AI and copyright law

GEMA v OpenAI and Getty Images v Stability AI

Can a machine “learn” a copyrighted work in the legal sense, and if so, who owns the results of that learning? In the age of AI, copyright law faces new challenges more fundamental than preventing copying: It must define what “copying” means when knowledge becomes data.

Munich Court delivers landmark ruling against OpenAI

The Munich Regional Court has handed down a landmark judgment (case no. 42 O 14139/24) holding OpenAI directly liable for copyright infringement in both training and output of its GPT-4 and GPT-4o models. In GEMA (German collective society for performance and reproduction right) v OpenAI, the court found that ChatGPT reproduced verbatim lyrics from nine well-known songs by German artists including Herbert Grönemeyer and Helene Fischer. According to the judges, this was not the result of abstract pattern learning but of the models memorising and storing protected texts, constituting unlawful reproduction under German copyright law.

In this regard two independent infringements occurred: the storage of copyrighted lyrics during model training, and the unauthorised generation of those lyrics upon user request. OpenAI's reliance on the EU text-and-data-mining exception was rejected since the exception does not permit retention of works in a form that enables full reconstruction. GEMA consequently secured injunctive relief against OpenAI, including further annex claims. However, their claims relating to authors' personality rights were dismissed, as the court found the factual and legal threshold for those claims unmet.

The judgment is of fundamental importance; however, the German Supreme Court may have the last word. The appeal is already pending with the Appellate Court. Notably, the Munich Regional Court declined to refer the case to the Court of Justice of the European Union (CJEU), signalling confidence that current EU copyright rules provide sufficient clarity.

Case details at a glance

Jurisdiction: Germany

Decision level: Munich Regional Court

Parties: GEMA v OpenAI

Date: 11 November 2025

Citation: 42 O 14139/24

Decision: dycip.com/LGMunich-O-14139-24

Jurisdiction: England & Wales

Decision level: High Court

Parties: Getty Images (US) Inc

& Ors v Stability AI Limited

Date: 04 November 2025

Citation: IL-2023-000007

Decision: dycip.com/2025-EWHC-2863-Ch

Developers should implement robust licensing frameworks for creative content



Stability AI (mostly) prevails in UK High Court claim

By contrast, in the UK, the High Court recently rejected Getty Images' secondary copyright infringement claim against Stability AI, only making limited trade mark infringement findings in Getty's favour.

Getty had initially alleged that the scraping and use of its copyright-protected images during the development and training of the generative AI model Stable Diffusion constituted primary copyright infringement. However, by trial, the primary copyright infringement claims had been abandoned by Getty, as it transpired that the relevant acts, including training and development, occurred outside the UK.

Addressing the secondary copyright infringement claim, the court found that an “infringing copy” under sections 22, 23, and 27 of the Copyright, Designs and Patents Act 1988 could contain intangible articles. However, it rejected Getty's argument that Stable Diffusion itself was an infringing copy, because the model weights (the learnable parameters controlling the functionality of the AI model) within Stable Diffusion did not themselves store or reproduce any of Getty's copyright-protected images.

Getty was slightly more successful in its trade mark infringement claims under sections 10(1) and 10(2) of the Trade Marks Act 1994. The court found that, in a limited number of cases, Stable Diffusion produced outputs that were identical or similar to the GETTY IMAGES or ISTOCK trade marks, and there was a likelihood of (post-sale) confusion. However, these findings were confined to specific historical versions of Stable Diffusion.

Getty's section 10(3) trade mark infringement failed, among other things, because there was no evidence of a change in consumers' economic behaviour. Indeed, the court noted that consumers searching for free, non-watermarked Getty images would not find Stability AI's images bearing GETTY or ISTOCK watermarks to be of interest.

Key takeaways

Whilst UK legislation is “always speaking” (the principle that, as a general rule, a statute should be interpreted taking into account changes that have occurred since the statute was enacted), the High Court could not extend the concept of an “infringing copy” to fill perceived policy gaps. In the meantime, the judgment serves as a reminder that infringement findings are territorial, evidence-driven and fact-specific.

Getty Images has now been granted permission to appeal the UK High Court decision with the trial judge noting that it raises a “novel and important” point of copyright law. It will be very interesting to see how the Court of Appeal grapples with the statutory meaning of “infringing copy”.

While the High Court deferred the broader policy questions to Parliament, the Munich ruling reinforces an emerging EU stance that strengthens copyright as a property right. Yet for now it remains a first, not definitive step in EU AI jurisprudence. The Munich ruling underscores that large-scale AI models are not exempt from copyright constraints and highlights the growing expectation that developers implement robust licensing frameworks for creative content.

Authors:

Lisa Bieber & Agnieszka Stephenson



Political parody of a famous brand IKEA v Algemeen Vlaams Belang

Case details at a glance

Opinion of Advocate General Szpunar

Date: 13 November 2025

Citation: C-298/23

Parties: *Inter IKEA Systems BV v*

Algemeen Vlaams Belang VZW

Opinion: dycip.com/opinion-c-298-23

An opinion of Advocate General Szpunar, on a case referred to the Court of Justice of the European Union (CJEU), assesses how freedom of expression, under Article 10 (ECHR), interacts with EU trade mark law. The CJEU is set to determine whether political parody or satire can be relied upon as “due cause” in an infringement case and how to balance a conflict between fundamental rights of the same rank, namely freedom of expression and the right to property.

Background

Inter IKEA Systems BV (IKEA), the DIY furniture company, has taken action against a Belgian political party Vlaams Belang for a 2022 political campaign on immigration, which parodied IKEA's name, logo, and colours, titled “IKEA Plan” (an acronym for “Immigratie Kan Echt Anders”: “Immigration Really Can Be Different”).

The campaign contained 15 “ready to assemble” political proposals, presented in the form of an IKEA assembly instruction manual, which included IKEA's trade marks in the accompanying illustrations.



VLAAMS BELANG

Image source, INTA Amicus Brief September 2023: dycip.com/inta-ikea-parody

IKEA brought trade mark infringement proceedings in Belgium. The Brussels Enterprise Court referred one question to the CJEU: Can freedom of expression, including the freedom to express political opinions and political parody, constitute “due cause” for using a sign identical

or similar to a well-known trade mark? And if so, what criteria should be used to balance the fundamental rights and the importance attached to each of them?

Use in the course of trade

The Advocate General first assessed whether the use complained of constitutes use in the course of trade in relation to goods or services, noting that use in the course of trade can occur by a non-profit entity. The opinion details how political parties receive grants, resulting in an indirect but identifiable link between the campaign and funds received. Whilst a political programme is not, in itself, a good or service; organising an event under the IKEA sign, affixing it to objects distributed to supporters, or using it for advertising may amount to use in relation to goods and services. This remains to be determined by the referring court.

Freedom of expression v intellectual property protection

The core issue is whether use of a famous trade mark, to reinforce a political message, may constitute “due cause”.

The Advocate General notes some reservations on this mechanism, namely that trade mark law is “not the most appropriate for resolving tensions between free political debate and the rights of another person who does not wish to be drawn into the marketplace of ideas”.

However, this is the legal framework which must be applied, concluding that **due cause may serve as a mechanism to protect freedom of expression, in the field of trade mark law.**

On the relevant criteria for assessment, the Advocate General reinforces the need to strike a balance, which involves subjectively weighing the competing interests and rights of the parties.

A valid justification may exist “where the use of a sign is necessary because of objectively overriding considerations or the subjective interests of a third party, including the economic and commercial relevance of that use”.

The key factor here is whether “the expression at issue contributes to a debate of general interest”. Normally, there is very little scope for imposing restrictions on political speech or matters of general interest; however, the scope can be wider in commercial matters.

Clearly the political campaign itself concerned a subject of legitimate public interest. However, the Advocate General suggested that use of the IKEA marks was not relevant to the political issue and the sign was used by the political party **purely** to increase the visibility of the campaign. This would not, in itself, be justified by its contribution to the debate on immigration. This is bolstered by the fact that IKEA has never engaged itself in the immigration debate. Therefore, the program does not raise public interest issues which relate to the mark, the proprietor or their goods and services, pulling the use outside the scope of the need for public scrutiny of corporate conduct.

Political parody, under copyright, is use which evokes an existing work, whilst having notable differences from the original; and is humorous or mocking. This will be for the referring court to decide.

The Advocate General concludes that a proprietor of a reputable trade mark cannot be compelled under “due cause” to tolerate infringing use, where the potential contribution to the debate of public interest does not outweigh the fact that it is an attempt to ride the coattails of a sign to promote a political program.

Conclusion

This opinion suggests that freedom of expression cannot be relied upon as a blanket defence under due cause, if the use does not target the proprietor (or their goods/services) and the political programme is simply borrowing a famous mark, for rhetorical effect, to raise visibility for an unrelated political campaign or debate. We await final judgment from the CJEU.

Author:
Abigail Macklin



Nine lives and counting Puma successful at the General Court

Case details at a glance

Jurisdiction: European Union

Decision level: General Court

Parties: Puma SE v EUIPO & CMS Costruzione macchine speciali SpA

Date: 22 October 2025

Citation: T 491/24

Decision: dycip.com/t-491-24

In this longstanding dispute, the EU General Court has annulled another decision of the Board of Appeal of the EUIPO, this time on the basis that the Board of Appeal failed to consider the specific degree of reputation held by Puma SE's earlier marks.

In oppositions, when considering reputation grounds, the existence of a link between the marks at issue must be assessed globally, taking into account all factors relevant to the circumstances of the case, including, *inter alia*, the strength of the earlier mark's reputation. Similar considerations apply when considering injury. On this basis, assessing the earlier trade mark's reputation and its degree is an essential step.

In this decision, the General Court found that the degree of reputation of the earlier mark must be determined precisely or, at least, the best-case scenario for the losing party must be considered; framing a reputation as "at least average" is insufficient.

Background

In December 2012, CMS Costruzione macchine speciali SpA filed an international registration designating the European Union for the figurative mark shown below depicting, *inter alia*, a feline bounding to the left:



Image source T 491/24: dycip.com/t-491-24

The EU designation covers various goods and services in classes 7, 11 and 37

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broadly related to heating, air conditioning and refrigeration machinery and the installation and repair of such goods.

In November 2013, CMS Costruzione macchine speciali SpA's EU designation was opposed by Puma on the basis of two of its earlier figurative European Union trade marks (EUTMs), shown below, covering, *inter alia*, goods such as clothes in class 25.



Image source T 491/24: dycip.com/t-491-24

The opposition was directed against the EU designation in its entirety and was based on reputation grounds.

In 2014, the Opposition Division rejected the opposition on the ground that Puma had not established a reputation in the earlier marks. Since, there has been a series of decisions from the Board of Appeal and the General Court, this being the third time the matter has gone to the General Court.

In the contested decision at hand, the General Court considered the Board of Appeal's decision to (again) dismiss Puma's appeal. The Board of Appeal had dismissed the appeal on the basis that the evidence showed the earlier marks to have "at least" an average degree of reputation for sporting shoes and sports clothing, at least in some EU member states. Despite this "at least average reputation", it rejected that a link between the

marks would be established. For the sake of completeness, it also considered and rejected the claim that any harm would be established.

The General Court's decision

In this third decision, the General Court considered whether the Board of Appeal erred in law by failing to establish the precise degree of reputation enjoyed by the earlier marks, bearing in mind that the strength of the reputation is a relevant factor for the overall assessment of whether there is a link between the marks at issue (and also as to whether injury has been caused).

On this basis, the General Court found that the assessment requires a definitive conclusion, which means that no analysis can be carried out on the basis of vague hypotheses that do not acknowledge a reputation with a specific level of strength. Therefore, the General Court found it insufficient for the Board of Appeal to find "at least an average degree" of reputation.

In this respect, the General Court held that it is required to determine precisely the degree of reputation (average, high or even very high), or at least expressly take into account the best-case scenario for the losing party before it. If a decision maker is to undertake a best-case scenario assessment, the assessment should be explicit and clear, and not implicit or abstruse.

In this case, the best-case scenario would be to consider a very high degree of reputation for the earlier marks when considering the overall assessment of the link. Notably, the General Court found that Puma had claimed a "very high degree of recognition on the market" and a "well-known character" for its earlier mark, and so it was entitled to such an assessment.

The General Court concluded that by not expressly considering the best-case scenario for Puma, the Board of Appeal had erred in law. Therefore, the contested decision was annulled in its entirety.

Author:

Sophie Rann



D YOUNG & CO INTELLECTUAL PROPERTY

And finally...

UKIPO

UKIPO fee increases Effective April 2026

The UK Intellectual Property Office (UKIPO) has confirmed that it will implement significant fee increases, as of 01 April 2026, subject to parliamentary approval. UKIPO fees have not increased for trade marks since 1998, for patents since 2018, and for designs since 2016. The UKIPO has indicated that the increases should enable continued investment in its systems and higher quality services. The intended change will increase the official fees by 25%. Examples of what this may mean for UK trade marks and designs are set out in the table below.

Next steps

The UKIPO has indicated that it will publish full guidance early in 2026. If you are a rights holder, it is worth accelerating any filings now, to benefit from the existing lower rates,

particularly in light of the UKIPO's decision to also abolish the acceptance of series marks in the future. Renewal fees can also be paid up to six months early for trade marks and designs and up to three months for patents. Across a large portfolio, early payment of renewal fees can result in large savings.

Despite the fee increases, the UK remains a very cost-effective place to file rights as fees are lower than many other IP offices. Trade mark applications are also examined very quickly, usually within two to three weeks of filing which is much faster than the majority of jurisdictions. If you have any questions on the fee changes and how they may affect you, please contact your usual D Young & Co advisor.

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IP right	Service	Current fee (£) (up to April 2026)	Likely fee (£) (after April 2026)
UK trade mark	Application fee (online)	170	205
	Additional class fee	50	60
	Notice of opposition (section 5(1)/5(2) only)	100	125
	Notice of opposition (other grounds)	200	250
	Record assignment	50	60
	Renewal (online)	200	245
UK design	Application fee (single application)	50	60
	Application (up to ten designs)	70	85
	Renewal (first)	70	85
	Total renewal over lifetime	410	500

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