



Reports of Cases

Judgment of the General Court (Ninth Chamber) of 15 July 2020 – Itinerant Show Room v EUIPO – Save the Duck (FAKE DUCK)

(Case T-371/19)

(EU trade mark – Opposition proceedings – Application for European Union figurative mark FAKE DUCK – Earlier European Union figurative mark SAVE THE DUCK – Relative ground for refusal – Likelihood of confusion – Relevant public – Similarity of the goods or services – Similarity of the signs – Global assessment of likelihood of confusion – Article 8(1)(b) of Regulation (EU) 2017/1001)

1. *EU trade mark – Definition and acquisition of the EU trade mark – Relative grounds for refusal – Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services – Likelihood of confusion with the earlier mark – Criteria for assessment*

(European Parliament and Council Regulation 2017/1001, Art. 8(1)(b))

(see paras 20, 21, 62, 63)

2. *EU trade mark – Definition and acquisition of the EU trade mark – Relative grounds for refusal – Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services – Likelihood of confusion with the earlier mark – Assessment of the likelihood of confusion – Determination of the relevant public – Attention level of the public*

(European Parliament and Council Regulation 2017/1001, Art. 8(1)(b))

(see paras 23, 64)

3. *EU trade mark – Definition and acquisition of the EU trade mark – Relative grounds for refusal – Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services – Likelihood of confusion with the earlier mark – Figurative marks FAKE DUCK and SAVE THE DUCK*

(European Parliament and Council Regulation 2017/1001, Art. 8(1)(b))

(see paras 28, 40, 51, 57, 65, 66)

4. *EU trade mark – Definition and acquisition of the EU trade mark – Relative grounds for refusal – Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services – Similarity between the goods or services in question – Criteria for assessment*

(European Parliament and Council Regulation 2017/1001, Art. 8(1)(b))

(see para. 30)

5. *EU trade mark – Definition and acquisition of the EU trade mark – Relative grounds for refusal – Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services – Similarity of the marks concerned – Criteria for assessment*

(European Parliament and Council Regulation 2017/1001, Art. 8(1)(b))

(see paras 33, 34)

6. *EU trade mark – Decisions of the Office – Principle of equal treatment – Principle of sound administration – EUIPO's previous decision-making practice – Principle of legality*

(European Parliament and Council Regulation 2017/1001)

(see para. 42)

7. *EU trade mark – Definition and acquisition of the EU trade mark – Relative grounds for refusal – Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services – Likelihood of confusion with the earlier mark – Enhanced distinctiveness of the earlier mark – Effect*

(European Parliament and Council Regulation 2017/1001, Recital 11 and Art. 8(1)(b))

(see para. 67)

Re:

The action brought against the decision of the First Board of Appeal of Recours EUIPO of 5 April 2019 (Case R 1117/2018-1), relating to opposition proceedings between Forest Srl and Itinerant Show Room.

Operative part

The Court:

1. Dismisses the action;
2. Orders Itinerant Show Room S.r.l. to pay the costs.