



## Reports of Cases

### Judgment of the General Court (Second Chamber) of 14 September 2022 – Lotion v EUIPO (BLACK IRISH)

(Case T-498/21)<sup>1</sup>

(EU trade mark – Application for the EU word mark BLACK IRISH – Absolute grounds for refusal – No distinctive character – Descriptiveness – Article 7(1)(b) and (c) of Regulation (EU) 2017/1001 – Equal treatment – Obligation to state reasons – Article 94(1) of Regulation 2017/1001)

1. *EU trade mark – Definition and acquisition of the EU trade mark – Absolute grounds for refusal – Marks composed exclusively of signs or indications capable of designating the characteristics of a product or service – Aim – Need to preserve availability*

*(European Parliament and Council Regulation 2017/1001, Art. 7(1)(c))*

*(see paragraph 15)*

2. *EU trade mark – Definition and acquisition of the EU trade mark – Absolute grounds for refusal – Marks composed exclusively of signs or indications capable of designating the characteristics of a product or service – Assessment of the descriptive nature of a sign – Criteria*

*(European Parliament and Council Regulation 2017/1001, Art. 7(1)(c))*

*(see paragraphs 16, 17, 21, 30, 32)*

3. *EU trade mark – Definition and acquisition of the EU trade mark – Absolute grounds for refusal – Marks composed exclusively of signs or indications capable of designating the characteristics of a product or service – Word mark BLACK IRISH*

*(European Parliament and Council Regulation 2017/1001, Art. 7(1)(c))*

*(see paragraphs 26, 33, 34, 36, 49, 58)*

4. *EU trade mark – Definition and acquisition of the EU trade mark – Absolute grounds for refusal – Marks composed exclusively of signs or indications capable of designating the characteristics of a product or service – Concept of characteristic*

<sup>1</sup> OJ C 391, 27.9.2021.

*(European Parliament and Council Regulation 2017/1001, Art. 7(1)(c))*

*(see paragraph 43)*

5. *EU trade mark – Procedural provisions – Statement of reasons for decisions – First sentence of Article 94(1) of Regulation 2017/1001 – Scope identical to that of Article 296 TFEU – Essential procedural requirement*

*(Art. 296 TFEU; European Parliament and Council Regulation 2017/1001, Art. 94(1), first sentence)*

*(see paragraphs 62-64)*

6. *EU trade mark – Definition and acquisition of the EU trade mark – Assessment of the registrability of a sign – EU rules only taken into account – Earlier registration of the mark in certain Member States or third countries – Decisions not binding EU bodies*

*(European Parliament and Council Regulation 2017/1001)*

*(see paragraph 71)*

7. *EU trade mark – Decisions of EUIPO – Principle of equal treatment – Principle of sound administration – EUIPO's previous decision-making practice – Principle of legality – Need for a strict and complete examination in each particular case*

*(European Parliament and Council Regulation 2017/1001)*

*(see paragraphs 73-76)*

## **Operative part**

The Court:

1. Dismisses the action;
2. Orders Lotion LLC to pay the costs.