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Longines successfully opposes registration of gur ative mark containing two extended wings

European Union - Dr Helen G Papaconstantinou and Partners Law Firm

- **These opposition proceedings between Longines and Point Tec involved two figurative marks containing stylised wings in Class 14**
- **The General Court confirmed that what the consumers were likely to memorise was the aspect consisting of wings represented by a black outline**
- **It rejected the argument that stylised wings were a common pattern for watches that could not be monopolised**

In ***Point Tec Products Electronic GmbH v European Union Intellectual Property Office*** (EUIPO) (Case T-615/19, 28 April 2021), the Sixth Chamber of the General Court has upheld a decision of the Fifth Board of Appeal of the EUIPO in opposition proceedings between Point Tec Products Electronic GmbH and Compagnie des montres Longines Francillon SA. The two conflicting signs were as follows:

Background

In 2017 German company Point Tec applied to WIPO for the registration of an international trademark designating the European Union. The mark at issue was the figurative mark shown above on the left, covering “watches and chronometric instruments” in Class 14, as well as other goods in Classes 3 and 25. Following the publication of the application, on 15 September 2017 Swiss company Longines filed an opposition in respect of the goods in Class 14, claiming infringement of Articles 8(1)(b) and 8(5) of Regulation 207/2009 (now Regulation 2017/1001). The opposition was based on its earlier EU trademark registration (No 225714) for the figurative sign shown above on the right, covering, in particular, goods in Class 14 - including “horological and chronometric instruments”, in respect of which Longines claimed a reputation.

The Opposition Division of the EUIPO rejected the action, having concluded that there was no likelihood of confusion and that the earlier mark did not enjoy a reputation. Upon appeal by the Swiss company, the Fifth Board of Appeal of the EUIPO annulled the decision of the Opposition Division in its entirety and refused protection to the mark applied for as regards all goods in Class 14. In brief, the Board of Appeal based its decision on the following ndings:Ą

- The earlier mark was of average distinctiveness;
- The level of attention of the relevant public was “average” to “high”;
- The goods in Class 14 covered by the two marks were identical;
- There was a low degree of similarity between the signs from a visual point of view and an average degree of similarity from a conceptual point of view, irrespective of whether the signs were perceived as representing stylised bird wings or air force badges; and
- Under the principle of interdependence of the factors to be considered, there was a likelihood of confusion.

Point Tec brought the case before the General Court, complaining that the statement of reasons of the Board of Appeal and the relevant conclusions were “manifestly [materially] flawed” in the light of its findings.

General Court decision

The General Court confirmed the findings of the Board of Appeal. The court accepted that the distinctiveness of the earlier mark was of an average level and that the relevant territory was that of the EU member states. As to the relevant public concerned, the court held that it consisted both of the general public and of professionals, confirming the findings of the Board of Appeal that the level of attention was “average” to “higher than average”. The fact that the goods had been found to be identical was not questioned.

Turning to the comparison of the signs, the court stressed that it was more likely that the consumers concerned would perceive the trademark applied for as a single sign in the form of “a particular geometric representation divided by lines and placed at the centre of stylised extended wings”, rather than as a “combination of multiple independent devices”. In view of the fact that the average consumer seldom has the opportunity of directly comparing the signs, the court agreed with the Board of Appeal that there was a certain similarity between the marks in question,

although not high. The court focused its attention on the central elements of the two marks, concluding that both could be perceived as a three-dimensional pyramid, thus making it likely that consumers might make a connection between the marks. Further, the court rejected Point Tec's reasoning that the horizontal lines of the mark were not to be perceived as extended wings and that there were other visual differences, stressing that what the consumers were likely to memorise was the aspect consisting of wings represented by a black outline, of the same length in relation to their central element. The court thus concluded that the existing similarities between the signs outweighed their differences.

The court also agreed with the Board of Appeal's conceptual assessment, and rejected Point Tec's argument that stylised wings were a common pattern for watches that should not be monopolised, underlining that the issue in this case was not whether to grant such a monopoly, but to assess whether there were similarities and a likelihood of confusion between the marks.

In the light of the above, the General Court confirmed all the findings of the Board of Appeal, including the analysis made by the board of the relevant case-law. Consequently, the General Court dismissed the action and did not allow the registration of the mark applied for.

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TAGS

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