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General Court confirms that there is no likelihood of confusion between AQUAPRINT and AQUACEM/AQUASIL

European Union - [NJORD](#)

- Dentsply opposed registration of AQUAPRINT for dental technology goods based on AQUACEM for dental products and unregistered common law rights in AQUACEM and AQUASIL
- EUIPO rejected opposition, holding, among other things, that common element 'aqua' had only weak distinctive character
- General Court agreed with that concept of water evokes range of associations with goods at issue

In [Dentsply De Trey GmbH v European Union Intellectual Property Office](#) (EUIPO) (Case T-312/18, 23 May 2019), the General Court has affirmed a decision of the Fifth Board of Appeal of the EUIPO finding that there was no likelihood of confusion between AQUAPRINT on the one hand and AQUACEM and AQUASIL on the other, all in relation to dentistry products.

Background

The case arose in 2013 when IDS SpA applied for an EU trademark for the mark AQUAPRINT in relation to various dental technology goods in Classes 1, 5 and 10 of the Nice Agreement. Dentsply De Trey GmbH lodged an opposition on the basis, firstly, of several national registrations for AQUACEM covering goods in Classes 5 and 10 for various dental products, including "dental cement" in Class 5. Secondly, the opposition was based on unregistered common law rights in AQUACEM and AQUASIL in the United Kingdom based on passing off, in particular in relation to "dental cement" in Class 5, among others. The Opposition Division of the EUIPO rejected the opposition, and Dentsply appealed.

Dentsply was again unsuccessful. The Fifth Board of Appeal of the EUIPO dismissed the appeal, holding, firstly, that the element 'aqua' had only a weak distinctive character due to the fact that it alluded to at least one characteristic of the goods at issue, namely their suitability to function in a wet environment,

whether that be the mouth of a patient, or a clinical or laboratory environment where contact with water is to be expected. Secondly, the board held that, despite the partial identity of the goods covered by the marks at issue, there was no risk that the relevant public might believe that those goods came from the same undertaking or from economically linked undertakings. Finally, the board found no passing off because the requisite misrepresentation was absent due to the weakness of the 'aqua' element.

General Court decision

On its second appeal to the General Court, Dentsply was unsuccessful for the third time, in that the court upheld the decision of the Board of Appeal.

As regards Dentsply's claim that 'aqua' was not weak, the court agreed with the board that the concept of water evokes a range of associations with the goods at issue and that the specialised relevant public (dentists) would understand the element to be descriptive. As regards the similarity of the signs, the court affirmed that the elements 'print' and 'cem' were completely different visually, phonetically and conceptually. The marks in the cases cited by Dentsply – that is, DUOVA and DUOVENT, AQUAPERFECT and WATERPERFECT, and CALCIMATT and CALCILAN - were all more similar than AQUAPRINT and AQUACEM.

Finally, the court confirmed the inapplicability of Article 8(4) of Regulation 2017/1001, as the element of misrepresentation was not present due to the lack of similarity of the signs.

Comment

This case is interesting in that it shows that the General Court better appreciates that weak elements should not be given much weight in the analysis of the similarity of marks. It also shows that, for a finding of passing off, an opponent must present a very convincing case of misrepresentation in order to be successful.

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