

5 Aug  
2021

# Bad news for Victoria's Secret as General Court refuses to cancel BODYSECRETS

European Union - [NJORD](#)

- **Victoria's Secret sought a declaration of invalidity of the mark BODYSECRETS for goods in Classes 3, 5 and 25**
- **The evidence submitted by Victoria's Secret did not establish a link between the expression 'body secrets' and the relevant goods**
- **The evidence did not demonstrate that such expression was used, at the time when the contested mark was filed, as a laudatory or promotional marketing term**

In its decision of 14 July 2021 in [Victoria's Secret Stores Brand Management Inc v European Union Intellectual Property Office](#) (EUIPO) (Case T-810/19), the General Court has upheld a ruling of the Fifth Board of Appeal of the EUIPO, which had found that the figurative mark BODYSECRETS possessed the requisite distinctiveness for goods in Classes 3, 5 and 25.

## Background

In 2016 Yiwu Dearbody Cosmetics Co Ltd registered the following figurative mark as an EU trademark for a wide variety of goods in Classes 3, 5 and 25:

**BODYSECRETS**

In 2017 Victoria's Secret Stores Brand Management Inc filed an application for a declaration of invalidity of the mark for all the goods for which it was registered. The grounds for invalidity relied on in support of the application were those referred to in Article 59(1)(a) of Regulation 2017/1001, read in conjunction with Article 7(1)(b), (c) and (d) of that regulation: lack of distinctiveness, descriptiveness and degeneration.

The application for invalidity was rejected by the Cancellation Division of the EUIPO. Victoria's Secret appealed, submitting the following evidence:

- an article from the international magazine *Cosmopolitan* dated 24 June 2014 entitled "Marilyn Monroe beauty and body secrets revealed";
- an article from the English magazine *OK!* dated 13 August 2014 entitled "Ferne McCann reveals beach body secrets";
- an article from the magazine *Marie Claire* (undated) entitled "45 best body secrets";
- an article from the magazine *Marie Claire* dated 3 January 2011 entitled "12 Celebrity Body Secrets";
- an article from the magazine *Look* dated 22 June 2015 entitled "Kate Middleton's Incredible Body Secrets Revealed";
- an article from the magazine *Glamour* dated 21 August 2012 entitled "Celebrity Body Secrets";
- an article taken, according to the applicant, from the magazine *Daily Star* dated 31 December 2014 entitled "Nicole Scherzinger shares her body secrets: Healthy for me means a healthy mind"; and
- an article from the magazine *Harper's Bazaar* dated 30 November 2011 entitled "Bazaar's beauty team scoop the beauty secrets of some of our favourite stars".

The Fifth Board of Appeal of the EUIPO found that this evidence did not establish a link between the expression 'body secrets' and the goods covered by the contested mark in Classes 3, 5 and 25, because it concerned the celebrities' physical exercise and dietary habits, rather than the products at issue. According to the board, some of the evidence referred to "beach body secrets", that is to say to "secret tips on how to improve one's body to go to the beach", without referring to specific products in Class 3, 5 or 25. In addition, the Board of Appeal observed that Victoria's Secret had adduced no evidence regarding the expression 'body secrets' being a 'promotional formula' which is used in an advertisement.

Accordingly, the Board of Appeal dismissed the appeal.

## Decision

Victoria's Secret appealed further to the General Court, arguing, among other things, that:

- the figurative elements of the contested mark were so minimal as to be negligible; and
- the board had incorrectly assessed the evidence produced.

As regards the first argument, the General Court found that the Board of Appeal had noted that the contested mark is a figurative mark made up of two words, 'body', written in black, and 'secrets', written in grey. Thereafter, however, the board examined and considered exclusively the word elements of the contested mark. Accordingly, since the board attached no importance to the figurative elements in the assessment of the mark, Victoria's Secret's argument was ineffective.

As regards the second argument, the court examined the articles produced by Victoria's Secret and held that some of the articles concerned famous people's particular dietary and fitness habits. In particular, the court highlighted the article in *OK!* magazine dated 13 August 2014 entitled "Ferne McCann reveals beach body secrets", which does not use the expression 'body secrets', but rather the expression 'beach body secrets'. Thus, the board was correct in finding that the evidence adduced by Victoria's Secret in support of its application for a declaration of invalidity did not demonstrate that the expression 'body secrets' had been used, at the time when the application for registration of the contested mark was filed, as a laudatory or promotional marketing term, or that that expression used in the press could refer to the goods covered by the contested mark.

Accordingly, the General Court dismissed the appeal.

## Comment

This case is interesting for several reasons. First, even though the figurative elements were deemed unimportant, the decision does a good job of supporting the distinctiveness of figurative marks. In addition, it is curious that Victoria's Secret chose to claim that a mark comprising the term 'secrets' lacked distinctiveness for goods in Classes 3, 5 and 25.

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