Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fifth Chamber)

20 September 2019*

(EU trade mark — Opposition proceedings — Application for the EU figurative mark Idealogistic Compass Greatest care in getting it there — Earlier international figurative mark IDÉA — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001)

In Case T-716/18,

The Logistical Approach BV, established in Uden (Netherlands), represented by R. Milchior and S. Charbonnel, lawyers,

applicant,

v

European Union Intellectual Property Office (EUIPO), represented by V. Ruzek, acting as Agent,

defendant,

the other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court, being

Idea Groupe, established in Montoir de Bretagne (France), represented by P. Langlais and C. Guyot, lawyers,

ACTION brought against the decision of the Fourth Board of Appeal of EUIPO of 21 September 2018 (Case R 2062/2017-4), relating to opposition proceedings between Idea Groupe and The Logistical Approach,

THE GENERAL COURT (Fifth Chamber),

composed of D. Gratsias, President, I. Labucka (Rapporteur) and I. Ulloa-Rubio, Judges,

Registrar: I. Dragan, Administrator,

having regard to the application lodged at the Court Registry on 5 December 2018,

having regard to the response of EUIPO lodged at the Court Registry on 22 February 2019,

having regard to the response of the intervener lodged at the Court Registry on 20 February 2019,

having regard to the Court's written question to the parties,

* Language of the case: French.

further to the hearing on 15 May 2019,

gives the following

Judgment [1]

[*omissis*]

Law

13 In support of the action, the applicant relies on a single plea in law, alleging infringement of Article 8(1)(b) of Regulation 2017/1001. It disputes the Board of Appeal's assessments relating to the relevant public, the comparison of the services, the comparison of the signs and the existence of a likelihood of confusion.

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The relevant public

18 According to the case-law, in the global assessment of the likelihood of confusion, account should be taken of the average consumer of the category of goods concerned, who is reasonably well informed and reasonably observant and circumspect. It should also be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question (see judgment of 13 February 2007, *Mundipharma* v *OHIM — Altana Pharma (RESPICUR)*, T-256/04, EU:T:2007:46, paragraph 42 and the case-law cited).

19 In the present case, since the earlier mark is an international registration designating the European Union, the Board of Appeal focused its analysis of whether there was a likelihood of confusion on the perception of the English-speaking public in the European Union. It found that the relevant public consisted both of 'average consumers' and of specialists who are professionals and that the general public usually displayed an average level of attention whereas the professional public was likely to display a high level of attention.

20 The applicant criticises the Board of Appeal for finding that the relevant public was 'mixed', consisting both of the general public and of professionals, and for not defining the relevant public with regard to each of the services, merely giving some examples. In particular, as regards the services covered by the mark applied for, it submits that the services 'transfer of palletised goods, including multimedia goods; groupage for palletised and non-palletised goods, either as part of dedicated services or as part of generalised services; transport of special-sized goods, not in bulk (for example machinery or equipment)' are aimed exclusively at the professional public, whereas the services 'security transport; express delivery for specific destinations; organisation of shipments for the return of goods' and 'consultancy in the field of logistics relating to transport' concern the general public as well as professionals.

21 As regards the services covered by the earlier mark, the applicant submits that the services 'unloading of goods from railway cars, airplanes, ships and trucks; towing; vehicle rental; physical storage of electronically stored data or documents; port and industrial logistics, workflow coordination, goods handling and commission of transportation for goods; chartering of vehicles, ships and airplanes; supply of assembly lines and goods handling of aeronautical parts' are aimed solely at the professional

1 Only the paragraphs of the present judgment which the Court considers it appropriate to publish are reproduced here.

public, whereas the services 'transport; packaging, storage and warehousing of goods; information relating to transportation and relating to packaging and storage of goods; freight forwarding; forwarding goods by railway and road; towing; vehicle rental' are aimed both at professionals and at the general public.

22 EUIPO submits that the applicant's argument is ineffective since the Board of Appeal found that there was a likelihood of confusion both in respect of the services aimed at the general public and in respect of the services aimed at the professional public displaying a high level of attention. The intervener also supports that approach.

23 In that regard, it must be borne in mind that the perception of the marks by the average consumer of the category of goods or services in question plays a decisive role in the global assessment of the likelihood of confusion (see judgment of 26 April 2007, *Alcon* v *OHIM*, C-412/05 P, EU:C:2007:252, paragraph 59 and the case-law cited).

24 Likewise, according to the case-law referred to in paragraph 18 above, the relevant public's level of attention is likely to vary according to the goods or services in question. That level of attention influences, inter alia, the perception of the signs.

25 It follows that the definition of the relevant public and its level of attention with regard to each service or each category of services is of significant importance in assessing whether there is a likelihood of confusion.

26 As the applicant submits, in the present case, the Board of Appeal found that the services at issue were aimed at the general public and at specialists, but merely gave examples of services aimed at the general public, namely 'express delivery for specific destinations' or 'organisation of shipments for the return of goods'. In so doing, it defined the relevant public with regard to the services in question in an overall manner. It did not, however, identify which services were aimed solely at professionals displaying a high level of attention and which services were aimed both at professionals and at the general public, which displays an average level of attention.

27 It is true that, since, as EUIPO submits, the Board of Appeal found, in paragraphs 56 and 57 of the contested decision, that there was a likelihood of confusion both with regard to (i) the services that are aimed at professionals and at the general public and to (ii) those that are aimed solely at professionals, it was possible for it, for reasons of procedural economy, not to identify the average consumer with regard to each service in question.

28 However, that approach is compatible with the principles that emerge, in particular, from the case-law referred to in paragraphs 18 and 23 above only if the Board of Appeal was correct in finding that there is a likelihood of confusion both with regard to (i) the services that are aimed at a public consisting of the general public, displaying an average level of attention, and of the professional public, displaying a high level of attention, and to (ii) the services that are aimed solely at the professional public.

29 By contrast, if the finding of the Board of Appeal that is referred to in paragraph 28 above is incorrect, inasmuch as there is a likelihood of confusion only with regard to one of the publics concerned, then the present complaint on the part of the applicant would have to be upheld and the contested decision would have to be annulled on that basis. The relevance of the present complaint thus depends on the merits of the findings of the Board of Appeal that are set out in paragraphs 56 and 57 of the contested decision, findings which will be examined below.

The comparison of the services

30 In the present case, the Board of Appeal found, in paragraphs 25 to 32 of the contested decision, that the services at issue were identical. The applicant disputes those findings. However, at this stage, for reasons of procedural economy, it is appropriate to start from the premiss that the services covered by the marks at issue are identical. It is in the context of the assessment as to whether there is a likelihood of confusion that it will be necessary to ascertain whether, on the basis of that premiss, the Board of Appeal's finding that there is a likelihood of confusion is valid (see paragraphs 65 to 70 below).

[*omissis*]

Whether there is a likelihood of confusion

[*omissis*]

63 In the present case, the Board of Appeal observed that the services at issue were identical and that the signs at issue, even though there were differences between them, were visually, phonetically and conceptually similar to a low degree on account of the element 'idea', which they have in common. It found that there was, in the present case, a likelihood of confusion within the meaning of Article 8(1)(b) of Regulation 2017/1001, both with regard to the services that were aimed at the general public and with regard to those that were aimed at the professional public, since the professional public, like the general public, only rarely had a chance to compare the various marks directly and therefore had to rely on its imperfect recollection of them.

64 As regards the distinctive character of the earlier mark, the Board of Appeal found, for the purposes of the global assessment of the likelihood of confusion, that it was normal, without examining the intervener's arguments relating to enhanced distinctiveness in consequence of intensive use on the market. The Board of Appeal found that an average degree of distinctiveness was sufficient to conclude that there was a likelihood of confusion in the present case.

65 In the present case, the signs at issue are visually, phonetically and conceptually similar to a low degree (see paragraphs 49, 56 and 61 above). The level of attention which the relevant public displays with regard to the services at issue is one of the particular factors to be taken into account in assessing whether there is a likelihood of confusion. In the present case, the Board of Appeal found that some of the services were aimed solely at the professional public, the level of attention of which is high and which takes the time to study the marks at issue.

66 Even if the services at issue were identical, as the Board of Appeal found (see paragraph 30 above), and taking into account the normal distinctiveness of the earlier mark (see paragraph 64 above), the Board of Appeal should have ruled out any likelihood of confusion, at least with regard to the services aimed solely at the professional public, which will display a high level of attention. On account of that high level of attention when choosing the services at issue and in the light of the low degree of similarity between the signs at issue, in particular because their structures differ, a point which will not escape the notice of a particularly observant and circumspect public, there can be no likelihood of confusion as regards the commercial origin of those services.

67 In that regard, it must be pointed out that, contrary to what the Board of Appeal stated in paragraph 57 of the contested decision, the fact that professionals only rarely have a chance to compare the various marks directly and therefore have to rely on their imperfect recollection of them, cannot lead to the conclusion that the recollection of the marks at issue will be determined, in the present case, largely by their element in common, 'idea'.

68 Although the element 'idea' is included in one of the dominant elements of the mark applied for and is the distinctive element in the earlier mark, it will not be remembered by professionals as the only element that makes it possible to identify the marks at issue.

69 It follows that the present plea must be upheld as regards the services covered by the mark applied for which are aimed exclusively at the professional public.

70 However, since, in the present case, the Board of Appeal did not exhaustively identify which services were aimed solely at professionals displaying a high degree of attention and which services were aimed both at professionals and at the general public displaying an average level of attention (see paragraph 26 above), the present plea must be upheld in its entirety and the contested decision must be annulled in its entirety.

[*omissis*]

On those grounds,

THE GENERAL COURT (Fifth Chamber)

hereby:

1. **Annuls the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 21 September 2018 (Case R 2062/2017-4);**

2. **Orders EUIPO and Idea Groupe to bear their own costs and each to pay half of the costs incurred by The Logistical Approach BV.**

Gratsias Labucka Ulloa Rubio

Delivered in open court in Luxembourg on 20 September 2019.

[Signatures]