

EUIPO: 'iconic' Prada triangle pattern is basic and commonplace

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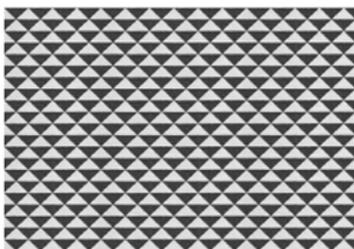


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- The Board of Appeal confirmed that Prada's triangle pattern was devoid of any distinctive character for a broad range of goods and services
- The pattern did not contain any notable variation in relation to the conventional representation of a pattern consisting of the repetition of a basic geometric shape
- Prada did not claim that the pattern had acquired distinctiveness, so the EUIPO assessed only its inherent distinctiveness

In [Prada SA v EUIPO](#) (Case R0827/2023-2), the Second Board of Appeal of the EUIPO has held that the EUIPO examiner was right in finding that Prada's triangle pattern (as displayed below) was devoid of any distinctive character for a broad range of goods and services in Classes 3, 9, 14, 16, 18, 20, 24, 25, 27, 28 and 35.



The Board of Appeal agreed that such pattern would be conceived by the relevant public merely as a decorative pattern of a style which is commonplace in the field of textiles and other industries concerned in this case. Interestingly, Prada did not claim that the triangle pattern had *acquired* distinctiveness, meaning that both the examiner and the Board of Appeal had to assess the *inherent* distinctiveness of the pattern.

Background

Prada sought protection in the European Union in respect of the triangle pattern depicted above for goods and services in Classes 3, 9, 14, 16, 18, 20, 24, 25, 27, 28 and 35. The EUIPO examiner decided that the application could proceed only for the goods and services in Class 9 (including media and software), Class 20 (shells; yellow amber) and Class 35 (including business management and marketing). The application for the other goods and services was rejected. This decision was based (mainly) on the following findings:

- Consumers are not in the habit of assuming a commercial origin based on a pattern of black and white triangles. Such pattern would not be striking and memorable.
- The upside-down isosceles triangle is rather commonplace and does not contain any distinguishing feature.
- The registrability of a sign as an EU trademark is based only on the EU Trademark Regulation and not on previous EUIPO practice (in contrast, Prada claimed that other simple patterns were registered without any objections as to their inherent distinctive character).
- Prada did not provide sufficient evidence to prove that the mark applied for had become distinctive in consequence of the use which had been made of it.

For a fashion company such as Prada, the refusal of the application for goods in Classes 24 and 25 and its acceptance for goods in Class 9, 20 and 35 was not sufficient. Therefore, Prada filed an appeal against the examiner's decision, requesting that the (partial) refusal be reversed.

Board of Appeal decision

The Board of Appeal agreed with the examiner that the triangle pattern lacked inherent distinctive character in relation to the goods and services for which registration was refused. According to the Board of Appeal, the triangle pattern may be applied to the surface of Prada's products, so the application did not consist of a sign unrelated to the appearance of the products it covered.

The board then noted that the triangle-shaped pattern was a basic and common style, since it was composed of a regular succession of triangles of the same size, differentiated by alternating a dark and bright colour. Therefore, the pattern did not contain any notable variation in relation to the conventional representation of a pattern consisting of the repetition of a basic geometric shape. Consequently, the mark applied for was devoid of any distinctive character for the goods and services in Classes 3, 9, 14, 16, 18, 20, 24, 25, 27, 28 and 35.

Comment

The decision that this rather simple pattern is not inherently distinctive and should not be registered is arguably correct. Although Prada claimed that this pattern is 'iconic', it also explicitly stated in its grounds of appeal that it was not relying on the *acquired* distinctiveness of the pattern. Therefore, any 'iconic' status (acquired through use) did not play a role in these proceedings.

As Prada makes significant use of this pattern, it remains to be seen how the case will play out in the future.

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