

General Court annuls partial invalidation in long-running DEVIN dispute

Mathijs Peijnenburg and Moïra Truijens
Hoogenraad & Haak, Advertising + IP Advocaten
12 January 2023



EUROPEAN UNION

Legal updates: case law analysis and intelligence

- These invalidity proceedings involving the mark DEVIN - the name of a Bulgarian spa town - have been ongoing for almost a decade
- The Board of Appeal found that the mark was invalid for all the goods covered other than mineral water complying with the specifications of the PGI
- The court found that the board had failed to assess the descriptive character of the mark with regard to all the goods covered

In [Devin EAD v European Union Intellectual Property Office](#) (EUIPO) (Case T-526/20), the General Court has held that the Board of Appeal of the EUIPO was wrong in finding that the DEVIN trademark was invalid for all the goods covered other than “mineral water complying with the specifications of the [protected geographical indication Devin Natural Mineral Water]”. Most notably, the General Court accepted Devin EAD’s plea concerning the Board of Appeal’s assessment of the descriptive character of the contested mark with regard to all the goods covered.

Background

On 21 January 2011 the word sign DEVIN was registered by Devin EAD in Class 32 for the following goods:

Non-alcoholic drinks; mineral water; seltzer waters; fruit-flavoured beverages; juices; syrups and other preparations for making beverages; aperitifs, non-alcoholic; spring water; flavoured water; non-alcoholic fruit extracts; non-alcoholic fruit juice beverages; table water; waters (beverages); seltzer mineral water; vegetable juices (beverages); isotonic drinks; cocktails, non-alcoholic; fruit nectars, non-alcoholic; soda water.

”

In July 2014 the intervener, the Haskovo Chamber of Commerce and Industry, filed an application for a declaration of invalidity of the mark alleging that it:

- consisted exclusively of a descriptive sign;
- would be contrary to public policy; and
- would deceive the public.

The application for revocation was accepted by the Cancellation Division of the EUIPO, which found that the DEVIN trademark was descriptive. This decision was then upheld by the Second Board of Appeal.

The General Court then [annulled the decision](#) of the Board of Appeal. It held, in essence, that the Board of Appeal had made an error of assessment in finding that the contested mark was known by the average consumer in Greece and Romania and in the member states of the European Union other than Bulgaria as the indication of a geographical origin. An appeal by the intervener to the Court of Justice was [dismissed](#) and the case was referred to the First Board of Appeal.

The Board of Appeal annulled the decision of the Cancellation Division in relation to the product “mineral water complying with the specifications of the [protected geographical indication Devin Natural Mineral Water]” in Class 32 and dismissed the appeal as to the remainder.

This led to an appeal before the General Court filed by Devin EAD, which invoked three pleas in law. Notably, Devin EAD claimed that the Board of Appeal had erred in the assessment of the descriptive character of the contested mark with regard to all the goods covered.

General Court decision

The Cancellation Division had decided that, as the Bulgarian town of Devin was renowned as a spa town, the DEVIN trademark would be descriptive in relation to mineral waters. The First Board of Appeal came to the conclusion that the mark had acquired distinctiveness in relation to these goods, but did not consider the other goods covered by the trademark.

The General Court decided that the Board of Appeal had failed to assess whether the contested mark had, in the eyes of the relevant public, an association with the goods covered other than “mineral water complying with the specifications of the [protected geographical indication]”. By failing to do so, the Board of Appeal had not complied with the requirements established by settled case law.

Thus, if a trademark may be descriptive in relation to some of the goods covered by an application, it must still be assessed whether it may be perceived as descriptive in relation to the *other* goods covered by the mark.

Mathijs Peijnenburg

Author | Associate

mp@hoogenhaak.nl

Hoogenraad & Haak

Moira Truijens

Author | Partner

mt@hoogenhaak.nl

Hoogenraad & Haak